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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly Addendum 1 to the interim report on the elimination of all forms of religious intolerance concerning a visit to Greece, prepared by Mr. Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights, pursuant to General Assembly resolution 50/183 of 22 December 1995.

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INTRODUCTION

1. The Special Rapporteur on religious intolerance, acting within the terms of his mandate, visited Greece from 18 to 25 June 1996 at the invitation of the Greek Government.

2. During his stay, the Special Rapporteur visited Athens (18-22 June and 25 June) and Alexandroupolis (22-24 June) in order to meet with official representatives (of, inter alia, the Ministries of Foreign Affairs, Education and Worship, the Interior, Public Administration and Decentralization, Justice and Defence, as well as the Prefect of Evros).

3. He also met with religious and political leaders representing religious minorities, ecclesiastical authorities of the Orthodox Church, prominent individuals and representatives of non-governmental organizations, including Greek Helsinki Monitor, Minority Rights Group, SOS Racisme, the Marangopoulos Foundation for Human Rights, the Ligue hellénique pour les droits de l'homme and Helsinki Citizens Group. He also visited places of worship.

4. The Special Rapporteur wishes to thank the Greek authorities for their invitation. He also extends his appreciation to the various prominent representatives he met during his visit, in particular, those from non-governmental organizations.

5. During his stay, the Special Rapporteur focused in particular on legislation in the field of tolerance and non-discrimination based on religion or belief, on the implementation of this legislation and on the policy in force.

I. LEGISLATION IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Constitutional provisions and concerns of the Special Rapporteur

1. General provisions concerning religious freedom

6. Article 13 of the Greek Constitution of 1975 guarantees religious freedom, which implies freedom of belief or freedom of religious conscience (para. 1) and freedom of worship or of the practice of rites of worship (para. 2). Freedom of belief is guaranteed to all, whereas freedom of worship, although protected by the Constitution, may be subject to certain limitations arising in particular from the status of "known religion" and from the manner in which proselytism is viewed.

(a) The concept of "known religion"

7. Article 13, paragraph 2, of the Constitution provides that freedom of worship is reserved for "known" religions. This concept of "known" religion raises a number of questions because, although the concept is not defined in the Constitution, this provision relating to it limits religious freedom. This

limitation appears to be inconsistent with article 1, paragraph 3, of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which provides that "Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." Indeed, article 13, paragraph 2, of the Constitution explicitly imposes such legal limitations (in respect of public order and morals) and applies them to all known religions.

8. According to Greek legal practice and information supplied by the authorities, a "known" religion must have no secret dogmas and must not involve worship in secret. In the opinion of the Ministry of Justice, it must be a religion to which any person may adhere and it must be sufficiently transparent, so that it is possible to guard against religions that pose a threat to public order, morals and the rule of law.

9. The absence of any constitutional, legislative or other definition of the concept of known religion would appear to contravene the 1981 Declaration and the legal limitations envisaged therein and poses serious practical problems for religious minorities and for conscientious objection (see chap. II).

10. Moreover, it should be noted that article 14 of the Constitution provides that the seizure of newspapers and other publications before or after circulation is allowed by order of the public prosecutor in case of an offence against the Christian religion or any other known religion. Accordingly, religions which are not "known" are not covered by this provision.

(b) Proselytism

11. Article 13, paragraph 2, of the Constitution provides that proselytism in general - theoretically with respect to any religion whatsoever - is prohibited. The Constitution does not define the concept of proselytism. According to the Ministry of Justice, this prohibition applies to proselytism of a negative sort, and not to the dissemination of religious beliefs, which supposedly makes it possible to safeguard religious freedom from any dangerous religion.

12. The Special Rapporteur notes that proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration. However, proselytism is punishable under two "Necessity Acts", Act No. 1363/1938 and Act No. 1672/1939 promulgated during the dictatorship of General Metaxas (see chap. I.B, "Legislation on proselytism,") and their impact on religion in general and on religious minorities is of considerable concern (see chap. II).

2. Specific provisions concerning the Greek Orthodox Church

(a) The concept of a dominant religion

13. Article 3, paragraph 1, of the Constitution states that the dominant religion in Greece is that of the Eastern Orthodox Church of Christ. The legal meaning of the term "dominant" is that the Orthodox faith is the official religion of Greece. This status is particularly evident in the preamble to the Constitution, the religious oath taken by the President of the Republic and members of Parliament and the inviolability of the Holy Scriptures.

(b) Manifestations of the status of dominant religion

(i) Preamble to the Constitution

14. The preamble to the Constitution begins with the following incantatory religious declaration: "In the name of the Holy and Consubstantial and Indivisible Trinity".

(ii) Religious oath of the President of the Republic and members of Parliament

15. Article 33, paragraph 2, of the Constitution provides that, before taking up his duties, the President of the Republic must take the following oath before Parliament: "I do swear in the name of the Holy and Consubstantial and Indivisible Trinity to uphold the Constitution and the laws ..."

16. Article 59, paragraph 1, of the Constitution requires that members of Parliament, before taking up their duties, must take an oath, in the Parliament Chamber in a public meeting, to the Holy and Consubstantial and Indivisible Trinity.

17. Heterodox members of Parliament who adhere to a different religion take the same oath, adapted to their own dogma or religion. No such provision applies to the oath of the President of the Republic, which means that only an Orthodox individual may occupy that high office.

(iii) Inviolability of the Holy Scriptures

18. Article 3, paragraph 3, of the Constitution provides that the text of the Holy Scriptures is inalterable. The official translation of the text into another form, without prior approval of the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.

19. The Special Rapporteur notes that, although a State religion does not in itself run counter to any international instruments, it might ultimately do so to the extent that it justified or introduced discrimination against other religions.

B. Other legal provisions and concerns of the Special Rapporteur

1. General provisions concerning religious freedom

(a) Legislation concerning places of worship

20. Pursuant to Necessity Act No. 1672/1939 (which superseded Necessity Act No. 1363/1938), a government permit issued by the Ministry of National Education and Worship is required for the construction or establishment of non-Orthodox places of worship.

21. However, such approval in turn requires - not to mention, inter alia, a request by at least fifty families - authorization by the local Orthodox metropolitan. Any church or place for religious assembly built and operated without authorization is liable to be closed and put under seal and those responsible for the "illegal" installation may be prosecuted, imprisoned and required to pay a substantial fine.

22. According to information from non-governmental sources, these acts have made the regime governing the practice of any "heterodox" worship more rigid and at times almost arbitrary. Furthermore, the involvement of the Greek Orthodox Church - by virtue of its prerogative in the authorization process to issue an opinion having legal standing - in practice often appears to create serious impediments to the exercise of religious freedom by minorities (see chap. II).

(b) Legislation concerning proselytism

23. Pursuant to Necessity Act No. 1672/1939, proselytism is a criminal offence. It is defined as any direct or indirect attempt to influence or alter the religious beliefs of others, in particular by fraudulent means or with promises of any type of material or moral gain. The practice of proselytism is subject to severe penalties: these include imprisonment, fines, police surveillance and the expulsion of foreigners.

24. The Acts, which date from the dictatorship of General Metaxas but are still in force, were originally intended to safeguard the provisions of the 1911 Constitution prohibiting proselytism against the Orthodox Church. However, the 1975 Constitution does not draw such a distinction and protects all religions from proselytism. Therefore, according to some representatives, the Necessity Acts should be deemed outdated. A number of representatives of non-governmental organizations consider them to be manifestly contrary to the Constitution.

25. The Special Rapporteur reiterates his remarks concerning proselytism (see paras. 11-12 above) and notes that in practice the religious freedom of minorities is severely undermined, given the manner in which proselytism is viewed (see chap. II).

(c) Legislation concerning identity cards

26. Act No. 1899/1986 (art. 3, para. 1, subpara. 12) provides that identity cards must indicate the religion of the bearer. Unless a declaration to that effect is made, the identity card is not issued.

27. On 6 April 1993, the Greek Parliament adopted a new law on the matter obliging citizens to declare their religious affiliation on their identity cards. A draft amendment making the reference to religion optional on personal identity documents was withdrawn.

28. According to the Ministry of the Interior, Public Administration and Decentralization, the indication of religion on identity cards has no legal force and the notion of citizenship alone is paramount. The reference to religion apparently reflects a religious tradition and satisfies the demands of the Greek Orthodox Church. According to the Ministry of Justice, what is involved is the right to declare one's religion in accordance with international law. The religious identification of citizens would, for instance, be necessary in matters of inheritance or of funeral rites. The representatives of the Orthodox Church echoed the latter argument and said that they favoured an optional indication of religion on identity cards.

29. All non-governmental representatives were opposed to any indication of religion on identity cards because it might become a basic source of discrimination and intolerance based on religion or belief (see chap. II). They underscored the unconstitutionality of the existing law and its incompatibility with international law.

30. Attention was drawn in particular to the resolution of the European Parliament on the compulsory mention of religion on Greek identity cards:

> "... C. whereas the compulsory mention of religion on identity documents violates the fundamental freedoms of the individual as set out in the Universal Declaration of Human Rights and the European Convention on Human Rights,
>
> "... E. recalling that freedom of opinion and religious freedom are part of the foundations of a constitutional State and are the exclusive province of human conscience,
>
> 1. Calls on the Greek Government to amend the current legal provisions once and for all to abolish any mention, even optional, of religion on new Greek identity cards and not to bow to pressure from the Orthodox hierarchy ...;
>
> 2. Considers that the role which religion has played or still plays in any society, however important it may be and without value judgements, in no way justifies the requirement to mention religion on an identity card."

(d) Legislation concerning conscientious objection

31. Greek law does not make provision for civilian service for conscientious objectors in place of military service. The Greek State instituted, in 1977, by Act No. 731, an exceptional obligation to military service for a period of time double that of armed obligatory military service for those refusing to bear arms due to religious beliefs. In 1988, article 1, paragraph 2, of Act No. 1763, provided that those refusing to bear arms due to their religious or ideological beliefs were obliged to serve full or partial military duty double in length to that which, in each case, was required from the category in which they belonged. In article 5, paragraph 3 of the same Act, it was also provided that those who would serve, due to a court conviction for refusal to serve even their unarmed military service, a term of imprisonment equal in duration to the term of military service owed by them, in each case, were discharged from the call to enlist after their release from prison.

32. Based on the provisions mentioned above, the conscientious objectors capable of serving are obliged to perform military service. Those refusing to serve are referred to the military court with the charge of disobedience (art. 70 of the Military Penal Code). This charge is punishable by penalties ranging from six months imprisonment to the death penalty, depending on the situation in the country (war, general mobilization, peace, etc.). Act No. 1763 also exempts religious ministers of the so-called "known religions" from military service.

33. There is an ongoing debate on the constitutionality of introducing alternative civilian service. Jurists who consider that alternative civilian service is contrary to the Constitution believe that, since the Constitution guarantees that all Greeks are equal before the law (art. 4, para. 1) and requires its citizens to contribute to the defence of their country (art. 4, para. 6), permitting certain persons to perform civilian service would be tantamount to treating two groups of citizens unequally. Another objection drawn from the Constitution rests on article 13, paragraph 4: "No person shall be exempt from discharging his obligations to the State nor may he refuse to comply with the law by reason of his religious convictions".

34. Other jurists and non-governmental representatives cite instead article 13, paragraph 1, which provides that "freedom of religious conscience is inviolable. Enjoyment of individual and civil rights does not depend on the individual's religious beliefs". Some argue that alternative civilian service could also make a contribution to the country's defence. Others favour alternative civilian service because article 2, paragraph 1, stipulates that "it is the primary obligation of the State to respect and protect the value of the human being"; and article 5, paragraph 1, states that "all persons shall have the right to develop their personality freely ...".

35. According to the Ministry of Defence, the Greek Government is today dealing with conscientious objectors with extreme sensitivity, despite the fact that the constitutional framework does not allow any room for change of the existing legal framework.

36. In 1988, a draft law proposal for unarmed or social service was submitted to the Parliament. The provisions of this draft were, however, adjudged by the Central Law Preparatory Committee to be directly in conflict with article 4, paragraph 6, and article 13, paragraph 4, of the Constitution. Thus that draft law proposal did not, finally, reach the voting stage.

37. In 1991, the Ministry of Defence decided to draw up a new draft law proposal for unarmed or social (civilian) service. For this reason, the Ministry requested the opinion of the Legal Council of the State on the question: "Is the adoption of the institution of social (civilian) service for those refusing to bear arms and to serve even unarmed service in the Armed Forces due to their religious beliefs or reasons of conscience in accordance with the Constitution?". The Legal Council met on 10 October 1991 and issued opinion No. 669/90 in which it was unanimous in stating that the Constitution, as regards the reasons for institution of unarmed or social duty, was definitive, and superseded customary law. This is because, on the one hand, the provision of article 13, paragraph 4, does not allow for religious objections and, on the other, article 4, paragraph 6, does not allow for objections of an ideological or moral character. It is thus clear that the quest for a constitutional justification for conscientious objectors in the provisions of article 4, paragraph 6, of the Constitution is fruitless. Not only does it pre-empt any other constitutional justification basis, but it also brings out very emphatically this important provision as an immovable constitutional obstacle to the acceptance of religious objections and the erosion of the character and content of the military obligation. Therefore, based on the above-mentioned facts and justification, the Legal Council of the State was unanimous in its opinion that the adoption by law of the social (civilian) service would be contrary to the Constitution.

38. Furthermore, according to the Ministry of Defence, special measures are applied in favour of conscientious objectors as regards both the serving of a sentence and the place of detention (see chap. II, sect. A, "The Jehovah's Witnesses"). According to the Ministry of Justice and the Ministry of Foreign Affairs, the Greek State, despite the provisions of the Constitution relating to defence, has modified its stand by adopting a law providing for unarmed alternative service with certain privileges favouring conscientious objectors. Nevertheless, the conscientious objectors - in this instance, the Jehovah's Witnesses - have refused to wear uniforms, salute the flag or accept the period specified for performing alternative service. The Ministry of Defence claims that the Jehovah's Witnesses, by asking to be exempted from national service, were asking to receive treatment which would discriminate against other Greek citizens. The authorities maintain that the Jehovah's Witnesses must, as Greek citizens, respect the law in force and bear in mind the particular position of Greece, a small State that must protect its territorial integrity. According to the Ministry of Justice, the Jehovah's Witnesses are being prosecuted not for their beliefs but for having violated the law. The Ministry of Foreign Affairs indicated that the authorities were ready to make concessions provided they had no impact on national issues. The impact the Greek authorities seem to have in mind is any impairment of the obligation to perform national service and of the unity of the country.

39. According to the non-governmental representatives, it is necessary for the Greek State to adopt legislation recognizing the right to conscientious objection with respect to military service in order to put an end to infringements of the religious freedom of conscientious objectors, in particular Jehovah's Witnesses, and of their human rights in general within Greek society (see chap. II, sect. A, "The Jehovah's Witnesses"). The well-known Exemption of Ministers of Religion Act (Act No. 1763/1988) should also be fully applied (see chap. II, sect. A, "Protestant minority").

40. The Special Rapporteur draws attention to resolution 1989/59 of 8 March 1989 of the Commission on Human Rights of the United Nations, reaffirmed inter alia in 1991 (resolution 1991/65 of 6 March 1991) and in 1993 (resolution 1993/84 of 10 March 1993), which recognizes "the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights" (para. 1) and which recommends to Member States "with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service" (para. 3) which "should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature" (para. 4).

2. Specific provisions concerning Muslims

41. The relevant texts concerning the Muslim minority of Western Thrace are, first, the 1923 Treaty of Lausanne which, inter alia, guaranteed freedom of religion, equality before the law, the right to establish and control any charitable, religious and social institutions and any schools and full protection for religious establishments and, second, the Constitution in article 5, paragraph 2 (protection of life and freedom without, in particular, any distinction on grounds of religious belief) and article 4, paragraph 1 (equality before the law). The Special Rapporteur studied the legislation relating to muftis, waqfs and education.

(a) Legislation concerning muftis

42. Greek legislation originally provided for a procedure for electing muftis in accordance with article 11 of the Treaty of Athens of 1913; the relevant provision of the Treaty subsequently became part of Greek domestic legislation by virtue of Act No. 3345/1920, adopted by Greece in 1920. According to the Greek authorities, these provisions have not, however, been put into effect, in particular as a result of exchanges of Greek and Turkish populations in 1922 and the conclusion of a new agreement, the Treaty of Peace signed at Lausanne in 1923.

43. The decree of 25 December 1990 subsequently abolished the legal procedure for the election of muftis, in favour of a nomination procedure. Under that decree, a committee chaired by the prefect, and composed of men of religion and eminent Greek Muslim citizens, is responsible for proposing to the Minister of Education and Worship a list of qualified persons (who must, in particular, be

holders of a university degree from a school of advanced Islamic studies, whether Greek or foreign, or persons who have performed functions as an imam for at least 10 years and who have distinguished themselves by their morality and theological competence). The Minister chooses a mufti on the basis of the personal qualifications of the candidate. The mufti is finally appointed by a presidential decree adopted on the proposal of the Minister of Education.

44. The mufti may be relieved of his functions by presidential decree, on the request of the Minister of Education, in the following cases only:

(i) In the case of final sentences for a crime or offence as provided for in article 22 of the State Civil Service Code;

(ii) In the case of deprivation of civil rights, for whatever reason;

(iii) In the case of illness preventing him from performing his functions, professional incompetence, dishonourable conduct or conduct incompatible with his rank and functions.

45. The Muslim minority of Thrace appears to be divided with regard to the procedure for the choice of muftis. Some Muslims consider that the 1990 decree interferes in the choice by the Muslim community of its religious representatives and interpret it as leading to appointment by the authorities; they call, instead, for an election by indirect universal suffrage involving prominent Muslims and Muslim officials (about 200 to 300 people). They recall the legislation concerning the election of muftis that preceded the decree, and also refer to tradition and practice, in particular the election of Mr. Mehmet Emin Aga and Mr. Ibrahim Serif as muftis in mosques at Xanthi and Komotini on 17 August and 24 December 1991; these elections took place despite the opposition of the Greek State, which had appointed two other muftis (see chap. II, A, paras. 105-121, "Muslim minority").

46. Another group of Muslims, and the authorities, point out that, in countries where Islam is the dominant religion (for example Egypt, Saudi Arabia and Turkey), it is common practice for the head of the religious hierarchy to be appointed by the State. Moreover, in Greece, since muftis have judicial functions which extend to family law and the law of succession to appoint them through an election would jeopardize fulfilment of the provision in the Constitution (art. 8) stating that judges shall be appointed in accordance with the law; it would also compromise the principle of the independence of judges, both individually and in the exercise of their office, since it would create a situation of political patronage.

47. This dispute over the procedure for selecting muftis has repercussions in the religious field which are prejudicial to the entire Muslim minority of Thrace (see chap. II). It seems to be one of the factors preventing any serious approach to the problem of the Thracian Muslims.

(b) Legislation concerning the waqfs

48. Alongside the mufti who is appointed in accordance with the decree of 25 December 1990, there is a committee which administers the property (waqfs)

belonging to religious communities and charitable institutions within its district. According to information provided, Act No. 3345/1920 provided that the members of that committee were to be chosen through elections held within the Muslim community. This provision was abolished under the dictatorship and replaced by a procedure, which is still in force, for appointing the members of the committee.

49. The Muslim minority of Thrace is once again divided over the legislation concerning the waqfs; the arguments put forward on each side correspond to those put forward in the context of the legislation concerning the muftis. The disagreements also have practical implications for the Muslim minority in the religious field (see chap. II).

(c) Legislation concerning education

50. In addition to the provisions of the Treaty of Lausanne which provide that Thracian Muslims shall be taught their own language and the Islamic religion, the Greek Government adopted a new law in October 1995. The provisions of the new law aim at upgrading the quality of the education afforded to Muslim Greek citizens in order to make it equal to that of all other Greek citizens. More precisely, economic and career incentives are offered to Christian teachers who are stationed in minority schools and at the same time efforts are made to improve the qualifications of Muslim teachers. Furthermore, English language courses are being introduced at the primary school level, and physical education will henceforth be taught by graduates of the Physical Education Teachers Training College.

51. Article 2 of the new law constitutes the keystone of this effort. Under this article, Muslim high school graduates are afforded preferential terms of admission to universities and technical institutes (affirmative action) as was the case before for other classes of Greek citizens (children of immigrants and repatriates). A quota and special examinations for admission to universities have been fixed in order to raise the educational level of the minority and to facilitate its integration in the social fabric of the country.

C. Other legal questions

52. It will be noted that Greece has not ratified the International Covenant on Civil and Political Rights. The Covenant is particularly important since article 18 guarantees the promotion and protection of freedom of religion and belief, which are also protected by the basic case-law of the United Nations Human Rights Committee. The Greek Government is said to have initiated a project for the ratification of the Covenant. According to the non-governmental representatives, difficulties have emerged, in particular with regard to the articles concerning minorities. The Ministry of Justice stated that the Commission responsible for administration and decentralization had expressed a favourable opinion concerning ratification and that the subsequent stages of the procedure were pending.

53. Another point to be emphasized is the establishment of a commission for revision of the Constitution. The constitutional provisions concerning

religious freedom, affecting, in particular, the participation of the Greek Orthodox Church in the organization of powers and its relationship with minority beliefs and forms of worship do not seem to be the subject of any revision. In 1996, following a meeting with the Greek Orthodox authorities, the representatives of the Commission apparently stated that they had no reason to amend the constitutional articles relating to religious matters.

II. IMPLEMENTATION OF LEGISLATION AND POLICY IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

54. The Special Rapporteur has analysed both the situation of the religious minorities and that of the dominant Orthodox Church (the religion of about 95 per cent of the population).

A. Situation of religious minorities

55. During his visit, the Special Rapporteur gathered some figures relating to the religious minorities. Only estimates could be compiled (see table below) since, according to the Greek authorities, the State has no official statistics on religious minorities. According to the non-governmental representatives, the State's figures have not included the religious factor since 1951.

Religious minorities	Estimated figures
Christian minorities	
Catholics	About 50,000 Greek Catholics
	About 40,000 settled foreign Catholics
	About 80,000 Polish refugee Catholics
	About 45,000 refugee Filipino Catholics
Protestants	About 20,000
Orthodox Christians of the Old Calendar	About 700,000 to 1 million
Jehovah's Witnesses	About 70,000
Jewish minority	About 4,000
Muslim minority	About 120,000

1. Christian minorities

56. The Special Rapporteur looked into the question of the Catholic and Protestant minorities and the Jehovah's Witnesses.[1]

(a) Catholic minority

(i) Religion

Known religion and legal recognition

57. The Catholic religion is seen as a known religion. There is no special law recognizing that it possesses legal personality under public law. The third London Protocol (1830) dealt in the first place with the position of the Roman Catholic Church in Greece. Under that Protocol, France, which had provided protection for Catholics during the Ottoman domination, relinquished that role in the liberated Greek territories to the future sovereign of the emerging State and, in addition, it was provided that the Roman Catholic Church would be able to manifest its belief freely and publicly; that its property would be guaranteed; that its bishops would retain the totality of their functions and would enjoy the rights and privileges they had enjoyed under the patronage of the kings of France; and that the property which had belonged to former French missions or French establishments would be recognized and respected. Protocol No. 33 (1830), which followed, provided that the privileges enjoyed by the Catholics could not impose obligations on the Hellenic Government which might be prejudicial to the dominant religion. After the ratification of the Treaty of Sèvres (1923), on the protection of minorities in Greece, the prevailing opinion in Greek doctrine and judicial practice is that the London Protocol ceased to be in force. That interpretation is said to give rise to problems for the Catholic Church, in particular with respect to the official recognition of prelates, the creation of new dioceses, and so forth. Last, the See of Athens, dating from 1850, is not officially recognized and neither is the Archbishop, despite the fact that the Catholic Church is a known religion in Greece.

Religious activities, places of worship and religious objects

58. On the subject of places of worship, in addition to the problem of legal recognition mentioned above, the Catholic Church is said to encounter numerous difficulties in obtaining building permits by reason of the Necessity Acts. In fact, the Orthodox Church is said to block or delay the procedure by exerting pressure on the Ministry of Education and Worship. For example, at Aspra Spitia, for the church of St. Joseph, serving the Catholic workforce of the Péchiney factory, the local Metropolitan is said to have demanded of the Catholic Archbishopric in 1980 that the church should never be used by Greek Uniate Catholics. Following the refusal of the Catholic authority, the entire procedure for the building of the church was halted. Construction plans had to be amended and submitted to the Commission on the Construction of Orthodox Churches. It was only possible to make a start on building work one year later. The Ministry of Justice stated that the opinion of the local Metropolitan was not binding on the Ministry of Education and Worship and recalled the established practice of the Council of State in that connection.

59. Posters are occasionally put up on the facades of Catholic churches by extremist Orthodox organizations. These posters include such forms of wording as: "Zionism, Papism, Turkey, Free Masonry make war on martyred Serbia. Greece alone offers resistance and sympathizes with the struggling Serbs"; "Communism is vanishing in the Orthodox States, in eastern Europe, the Vampire of Rome (the Pope) is preparing to gorge himself".

60. Religious objects are sometimes the targets of vandalism. For example, the statue of Christ in the courtyard of the Cathedral of St. Denis in Athens was decapitated in February 1996.

61. On the subject of religious education within the school system, the private schools of the Catholic Church (12 Catholic schools with some 10,000 pupils, mainly of the Orthodox faith, and fewer than 1,000 Catholic pupils) teach the Catholic religion to pupils of that faith. In the State schools in the islands of Siros and Tinos, where 85 per cent of Greek Catholics live, Catholic teaching is also provided by priests or lay people. Problems are said to arise sometimes in connection with the creation of posts for Catholic teachers.

62. Foreign religious personnel who do not come from the European Union reportedly also occasionally encounter obstacles in connection with entry visas and the renewal of residence permits.

63. Except for the problems referred to above, the situation of the Catholic Church in the religious sphere is said to be satisfactory, in particular with respect to their religious publications and processions.

(ii) Education

64. According to the representatives of the Catholic Church, a Greek Orthodox education, focusing exclusively on the Orthodox religion and the Greek nation, has in fact come into existence to the detriment of the religious minorities. For that reason, it has come to be generally believed that only Orthodox Christians are truly Greek. Thus the Catholic Church and its spiritual head, the Pope, are allegedly portrayed in a negative light in school textbooks, particularly history books. Those textbooks are seen as being, as it were, permeated by Orthodox thinking. Nevertheless, according to non-governmental observers, appreciable progress has recently been made, in particular through the publication of textbooks on the history of religions and their philosophy which incorporate fairly satisfactory chapters on non-Orthodox religions.

(iii) Employment

65. According to information from non-governmental sources, Greeks of the Catholic faith are not, in practice, accepted for careers in the army, the police and other sensitive areas of the administration, including diplomacy. Some Catholics reportedly conceal their faith in order to have access to such posts.

66. The Ministry of the Interior, Administration and Decentralization stated that entry to the administration was subject, inter alia, to the requirement of Greek citizenship and not to a religious criterion. The Ministry specified that

the law precluded any discriminatory treatment and that in practice such behaviour was penalized.

67. The Ministry of Defence emphasized, on the one hand, that there was no legal obstacle to the admission of religious minorities, including Catholics, to the army, and, on the other hand, that no distinction of a religious nature was made within the structures of the army or under military law.

(iv) Other spheres

68. The non-governmental representatives consider that the religious minorities are subjected to a general climate of intolerance in the form of insidious and psychological pressures related to the problems outlined above. Another point concerns the mention of religion on identity cards, which is unanimously rejected as being a source of discrimination. The situation is said to be due to the preponderant influence of the Orthodox Church, principally its authorities, which are said to use religion as a tool to manipulate the people and the politicians to the detriment of religious minorities and to do so in order to affirm and safeguard their power and their status as the dominant religion.

69. This intolerance on the part of the Orthodox Church is reportedly echoed by the media, tolerated, or even utilized, by politicians for electoral ends and relayed by certain administrative officials; it exerts pressure on the justice system and is exacerbated, in particular, on the occasion of external events such as the fall of communism in Eastern Europe and the Balkans and the war in the former Yugoslavia (as the majority of the population of these countries is of the Orthodox faith, any action by the Catholic Church is interpreted by the Greek Orthodox Church as an attempt at conversion; the Vatican is also accused of cooperating with Muslims against the Orthodox Serbs in the former Yugoslavia).

70. According to the governmental delegates, the State and its legislation, while recognizing the dominant, but not overwhelming, role of the Orthodox Church, which represents the religion of the majority of the population for historical, national and traditional reasons, are said to provide a climate of religious freedom, notwithstanding isolated cases of intolerance or discrimination, in particular in the administration. According to the Ministry of Justice, the problems indicated by the representatives of the religious minorities are exaggerated and their claims are attributable to a pattern of behaviour, or even a complex, characteristic of any minority which feels it has to assert and organize itself to confront the majority. A similar line of argument was put forward by the representatives of the Orthodox Church (see chap. II, B).

(b) Protestant minority

(i) Religion

Known religion and legal recognition

71. There is no legislative text concerning the Protestant faiths. They are legal entities whose institutions are considered as belonging to the domain of private law. The question of the legal personality of the Evangelical Church has been raised in the past. In 1961, the Justice of the Peace of Katerini ruled that that Church constituted a legal entity under private law. The court of first instance of Katerini and the court of appeal of Thessaloniki decided, however, that the Evangelical Church had no legal personality. Finally, the Court of Cassation recognized the Evangelical Church as possessing legal personality under private law.

72. However, difficulties sometimes arise in respect, on the one hand, of the exemption of ministers of religion from military service and, on the other, places of worship.

73. With regard to ministers of religion, there have been reports of ministers of the Seventh Day Adventist Church being denied exemption by the Ministry of Defence because the Orthodox Church refuses to classify that Church as a known religion. Following legal proceedings, the Council of State or the Supreme Court, depending on the case, has confirmed the Seventh Day Adventist Church as a known religion and therefore entitled to have its clergymen excused from military service. However, according to the Ministry of Defence, these proceedings have to be instituted in every case, inasmuch as the court decisions recognizing the Church as a known religion have no effect in respect of third parties.

74. With regard to places of worship, applications by Protestant churches for building permits are said sometimes to be blocked because the Ministry of Education and Worship in practice follows the negative opinion of the Orthodox Church. It is claimed that the only way to get permission to build a place of worship is to institute legal proceedings and obtain a decision from the Council of State, which is costly in terms of both time and money.

Religious activities and places of worship

75. With respect to applications for building permits for places of worship, Protestants are reportedly in the same position as Catholics. Recently, however, the Ministry of Education and Worship seems to have become more open-minded and to have authorized the construction of a Pentecostal Church despite the objection of the local Metropolitan.

76. With regard to religious education within the school system, Protestants apparently do not ask to have Protestant religious courses introduced, but choose instead to be excused from the Orthodox courses and to conduct religious education at home.

77. Foreign non-European religious personnel reportedly sometimes have difficulty renewing their residence permits.

78. According to the Constitution and the Necessity Acts, proselytism is forbidden and is punishable, as demonstrated by the case of the Athens three and that of the three evangelist Air Force officers at Volos.

79. Three evangelists, an American named Stephens, a Greek named Macris and an Englishman named Williams were sentenced in 1984 to three and a half years in prison for proselytism. The sentence was set aside on appeal in 1986 on grounds of insufficient evidence rather than on grounds of religious freedom.

80. Three evangelist Air Force officers were convicted of proselytism following a complaint filed by the Orthodox chaplain, who accused them of endangering the unity of the nation (see the Special Rapporteur's communication of 9 October 1992 and the Greek authorities' reply of 12 February 1993 (E/CN.4/1994/79) and the supplementary reply of 8 August 1994 (E/CN.4/1995/91/Add.1)).

81. Aside from the aforementioned problems, the situation of Protestant religions in the religious sphere does not seem to be difficult, particularly with respect to religious publications, inasmuch as some of these Churches, including the Seventh Day Adventists, appear to have chosen to keep a low profile within Greek society.

(ii) Education

82. The situation of Protestants appears to be identical to that of the Catholics. The Protestant representatives add, moreover, that they are subjected to the proselytism of the Orthodox Church, which permeates the school system.

(iii) Other spheres

83. The observations made in the part relating to Catholics are equally pertinent here, particularly with regard to the overwhelming role of the Orthodox Church and the responsibility of politicians.

(c) The Jehovah's Witnesses

(i) Religion

Known religion and legal recognition

84. According to the decisions of the Council of State, Jehovah's Witnesses are a known religion. However, the civil courts often take the opposite view on this subject. There are also difficulties in the context of national service, from which Jehovah's Witness ministers are supposed to be exempt. Reportedly, the Ministry of Education and Worship follows the position taken by the Orthodox Church and states that the Jehovah's Witnesses are not a known religion; this thinking is echoed by the Ministry of Defence, which accordingly decides to call up Jehovah's Witness ministers. The latter challenge that decision in the

courts and the Council of State confirms its earlier decisions recognizing the Jehovah's Witnesses as a known religion. However, the Administration does not draw any conclusions from these decisions and requires that the question be resolved each time in the courts. So legal proceedings have to be instituted in each case. Moreover, in the meantime, Jehovah's Witness ministers are detained for refusing to do their military service (for example, the case of Anastasios Tasos Georgiadis, Special Rapporteur's communication of 9 October 1992 (E/CN.4/1993/62); and petitions Nos. 19233/91 and 19234/91, Dimitris Tsirus and Timotheos Kouloumpas versus Greece; report of the European Commission of Human Rights of 7 March 1996).

Religious activities, places of worship and conscientious objection

85. With regard to applications for building permits for places of worship, the Jehovah's Witnesses encounter difficulties similar to those described in the case of Catholics and Protestants. Since they are denied permission or do not hear from the Ministry of Education and Worship due to the opposition of the Orthodox Church, the Jehovah's Witnesses resort to renting rooms which are used for religious ceremonies and finally as places of worship. However, in accordance with the Necessity Acts, these unauthorized places of worship are sealed off by the police and the persons in charge of them are convicted by the courts.

86. Several cases reveal disturbing situations which the European Commission of Human Rights has described as violations of religious freedom (petition No. 18748/91, Titos Manoussakis and others versus Greece, report of the European Commission of Human Rights of 25 May 1995; petition No. 23238/94, Zizis Pentidis, Dimitrios Katharios and Anastassios Stagopoulos versus Greece, report of the Commission of 27 February 1996) and have been the subject of communications from the Special Rapporteur (case of the Jehovah's Witness congregation of Gazi, in Heraklion, Crete; case of the head of the Jehovah's Witness congregation in Alexandroupolis, Special Rapporteur's communication of 3 November 1994, report E/CN.4/1995/91).

87. In certain localities there is discrimination against Jehovah's Witnesses in the cemeteries. For example, in the local cemetery at Xanthi, a wall was built in order to separate the graves of the Jehovah's Witnesses from those of persons of other denominations. The metropolitan bishop is said to have demanded that the wall be built and the mayor acceded to the demand. The wall was eventually torn down in 1994 but the maintenance staff apparently do not tend to the graves of Jehovah's Witnesses.

88. Thousands of Jehovah's Witnesses are said to have been arrested and to have served long prison sentences for proselytism. There are numerous examples of these violations of religious freedom, in particular the case of Kokkinakis, a Jehovah's Witness who was exiled six times, arrested more than 60 times and served five years in various prisons for proselytism (Special Rapporteur's communication of 9 October 1992, E/CN.4/1994/79; case of Kokkinakis versus Greece - 3/1992/348/421 - decision, European Court of Human Rights).

89. With regard to conscientious objection, aside from the observations already made in chapters I and II, according to reports from non-governmental sources,

the figures regarding the number of Jehovah's Witnesses in prison as of 1 June 1996 are as follows:

Kassandra Agricultural Prison	58
Kessavetia-Volos Agricultural Prison	46
Avlona Military Prison	85
Sindos Military Prison	164
Total number of objectors	353
Total of sentences imposed	1,147 years
Total of sentences served	296 years

90. According to the Ministries of Justice and Defence, special efforts have been made with regard to Jehovah's Witness conscientious objectors, on two levels.

Serving of sentence

91. The sentences imposed upon the objectors are carried out in the military prisons. At the same time, efforts are made to have them transferred to the Kassandra agricultural prison, where one real day of imprisonment counts, in the best case, for two, depending on the type of work carried out by every detainee.

New places of detention

92. In a spirit of sensitivity, due to the extraordinary nature of the detainees of this category, it was decided on the one hand that they would be separated from other categories of detainees, and, on the other, that they would all be gathered and detained together, in a single prison. For this reason a special addition to the Military Prison of Salonica was established at Sindos with all facilities. The conditions of detention are reportedly satisfactory and Jehovah's Witnesses are said to be able to attend to their devotions.

93. As far as religious education is concerned, students are excused from the Orthodox religious course. However, non-governmental sources report that in several schools there are almost daily religious sermons hostile to the faith of the Jehovah's Witnesses and this is said to create psychological trauma among young Jehovah's Witness children.

(ii) Education

94. The account of the situation of the Catholics and Protestants applies to the Jehovah's Witnesses as well, but their situation seems to be worse. Apart from the information given above concerning religious education, non-governmental representatives have reported that Jehovah's Witness children who refuse to take part in events contrary to their religious beliefs, including

national holidays and public parades organized in the schools, have been punished and even expelled. For example, in petition No. 21787/93, Elias, Maria and Victoria Valsamis versus Greece, report of the European Commission of Human Rights, the Commission found that there had been a violation of religious freedom in the case of a Jehovah's Witness pupil suspended from school for a day by the principal because she had not participated in the school parade to mark the national holiday.

95. At times, young Jehovah's Witnesses are allegedly victims of incidents of religious intolerance, such as verbal insults and physical attacks, by Orthodox pupils influenced by their teachers.

96. Lastly, it seems that school textbooks continue to disseminate a negative image of the Jehovah's Witnesses, despite the efforts made in the case of other religions.

(iii) Employment

97. The forms of discrimination described in the case of Catholics and Protestants apply to the Jehovah's Witnesses as well (see, in particular, the cases of Pilaftsoglou, Tzenos and Nomidis, whose applications for teaching permits were rejected on the ground that they were Jehovah's Witnesses - Special Rapporteur's communications, E/CN.4/1994/79 and E/CN.4/1995/91).

(iv) Other spheres

98. The observations contained in the sections on Catholics and Protestants are relevant here. We should add that the situation seems more acute in the case of the Jehovah's Witnesses, probably because of their religious militancy, as opposed to the low profile maintained by the other religious minorities. Its manifestations, unique to the Jehovah's Witnesses, are, in particular, proselytism, conscientious objection and refusal to participate in events contrary to their religious beliefs. Such religious militancy competes directly with the interests of the dominant Church and indirectly calls into question the legislative and political system of the Greek State.

2. Jewish minority

(i) Religion

Known religion and legal recognition

99. In Greece, the legal status of the Jewish religion is guaranteed by a number of laws (L.2456/1920, L.F.367/1945, L.1675/1951, O.R. of 25 June 1951, D-L 01/106 9). Under a presidential decree, a Jewish community can be founded in towns where more than five Jewish families reside. Such communities are legal entities under public law and are administered by an Assembly and Council, which are elected by their members. All Jewish communities in Greece are represented by the "Central Jewish Coordination and Consultation Council", elected for three years by a general assembly composed of their special representatives.

Religious activities and places of worship

100. Each religious community includes a rabbi proposed by his community and appointed by presidential decree. There is also a council of rabbis which acts as a religious tribunal. The Civil Code (1946) revoked its civil jurisdiction but the council continues to exercise competence over Jews who are not Greek citizens and to pronounce the spiritual dissolution of marriages for which the civil court has granted a divorce.

101. The representatives of the Jewish community have declared that they have freedom of action in religious matters without interference by the State and that they have sufficient places of worship and Hebrew schools. They mentioned some minor problems which, in their view, are linked to the intolerance of certain poorly educated Orthodox priests. It seems, however, that these incidents are resolved through interfaith dialogue.

(ii) Education

102. The representatives of the Jewish community have cited both sporadic cases of intolerance by teachers and the occasional anti-Semitic content of school textbooks. However, political leaders have apparently assured the Jewish community that the school textbooks will be corrected.

(iii) Other spheres

103. The main problem facing the Jewish community is the fact that religion must be mentioned on identity cards, which is perceived as a potential source of discrimination as borne out by the Jewish experience throughout history. The legislation concerning identity cards is considered contrary to the Greek Constitution and to international instruments.

104. Unlike that of the Catholic and Protestant minorities and the Jehovah's Witnesses, the situation of the Jewish community seems to be eminently satisfactory.

3. Muslim minority

105. The Muslim minority of Thrace, whose population could not be ascertained but is probably around 120,000 persons, is composed largely of people of Turkish origin but also of Pomaks and Tziganes. The common denominator among these three groups is the Muslim religion and Greek citizenship.

(i) Religion

Religious activities

106. The division within the Muslim minority over the procedure for the selection of the muftis (see chap. I) seems to have a serious impact on the smooth conduct of religious affairs.

107. In practice, following an election by a show of hands held in the mosques in 1991 by some of the Muslims, Mr. Mehmet Emin Aga in Xanthi and Mr. Ibrahim Serif in Komotini are acting as muftis for the Muslim community (for a summary of the Aga case, see the Special Rapporteur's communication, E/CN.4/1992/52). However, they are not recognized by the Greek authorities, who appointed two other muftis pursuant to the 1990 decree. Moreover, Mr. Aga and Mr. Serif were convicted of the offence of usurping the title and, in particular, of signing illegal documents. Mr. Aga was sentenced to 10 months in prison; he was imprisoned and then released for health reasons before his term was over upon payment of a fine. This situation was not without its consequences within the Muslim community, which has been deeply divided by these events, as evidenced by attendance at places of worship and participation in the celebration of religious holidays. Thus, it seems that relations between the appointed muftis and a significant portion of the Muslim minority are very limited and that very few congregants are present to hear their sermons. At times, the muftis are even prevented from entering the mosques. Hence, the rules concerning the procedure for the appointment of muftis are of paramount importance.

108. Religious rites, practices and holidays and, in particular, the Ramadan fast, seem to take place freely and with the participation of theologians from the Arab countries and Turkey. However, the entry of religious leaders from Turkey, invited by the unofficial muftis without consulting the Greek authorities, was apparently blocked by Greece (see Special Rapporteur's communication, E/CN.4/1995/91).

109. Concerning religious education, two Koranic schools have been functioning in Komotini and Echinos since 1949 and 1956, respectively. They provide religious training to children wishing to pursue higher-level studies in religious schools or to become khatibs or imams. Those Muslims who are in favour of electing the muftis are also in favour of being able to choose the teachers who offer the religion courses; for example, choosing them could be a prerogative of the elected mufti.

Places of worship, waqfs and cemeteries

110. In the matter of places of worship, the Muslim community reportedly has at least 300 mosques in Thrace, but not one in Athens. According to the Ministry of Foreign Affairs, the ratio of mosques to the Muslim population is higher in Thrace than the ratio of Orthodox churches to the Orthodox population.

111. In addition, the authorities claim that no obstacle is raised to the construction or renovation of mosques.

112. The authorities and some non-governmental representatives have acknowledged that incidents (arson, criminal acts) have been directed against places of worship, for instance in Alexandroupolis (for a report on that situation see the Special Rapporteur's communication, E/CN.4/1995/91). The Ministry of Foreign Affairs emphasized that these acts were committed by fanatics and moreover they have been isolated and sporadic. The State reportedly redressed matters by paying for repairs and renovations (see the reply of Greece of 23 May 1995, E/CN.4/1996/95). Some non-governmental organizations also felt that these

manifestations of intolerance were the result of isolated provocations by extremists and should not be over-dramatized. The same applies to cases in which cemeteries were desecrated.

113. With regard to the waqfs, apart from the views set out in the section on legislation (chap. I), the Special Rapporteur notes that in practice there is a difference of opinion within the Muslim community and vis-à-vis the authorities concerning the procedure for selecting members of the committee for the administration of the waqfs. During the Special Rapporteur's visit, protest demonstrations demanding that the members of the committee should be elected reportedly took place, during which the miserable condition of the waqfs was denounced.

(ii) Education

114. Turkish, being the only minority language to possess a written form (Pomak and Roma do not), is taught in over 240 minority schools (primary and secondary schools and lycées) in Thrace to a total of 11,000 Muslim students. Their education is the responsibility of a large number of teachers (770), of whom more than 250 are graduates of the Special Teachers' Training College in Thessaloniki who perfect their knowledge of the Turkish language at this college, which has been operating for over a quarter of a century.

115. It must be noted, however, that according to the authorities, owing to the exclusive teaching in a minority language, the imperfect knowledge of Greek on the part of many minority students constitutes a very serious obstacle to their social and professional integration.

116. The Muslim minority's level of education is thus apparently very low, which prompted the new law of October 1995 intended to facilitate access to higher education by Muslim students (see chap. I).

(iii) Employment

117. The situation described and the comments made in the sections relating to Christian minorities are equally relevant to the Muslims in Thrace.

(iv) Other spheres

118. The status of the Muslim minority in Thrace appears essentially to be both a political and a religious issue, in which politics often makes a tool of religion. This has a real impact on religious affairs, as evidenced by the serious problems relating to the methods of appointing muftis or members of the committee for the administration of the waqfs and teachers of religion.

119. The political relations between Greece and Turkey seem to be an essential factor in these problems. Most of the non-governmental observers stressed the fact that the Muslim minority in Thrace was held hostage by Greek-Turkish relations. Each State is apparently in part responsible for the unsatisfactory status of the Muslims in Thrace, with Turkey considering them more as a political pawn and Greece not paying sufficient heed to the views of this community that has clearly been living marginally and has been the butt of long-

standing intolerance. Greece continues to link their treatment to that of the Greek minority and the Orthodox Patriarchate of Constantinople, both of which have reportedly been subjected to intolerance and discrimination (see the Special Rapporteur's communications on Turkey, E/CN.4/1995/91 and E/CN.4/1996/95).

120. As a case in point, the Muslims who favour the method of appointing muftis that was established in 1990 - and there do not seem to be too many of them - reportedly are being or have been subjected to pressure from Turkey, which actively favours the unofficial muftis, and are apparently prohibited from entering Turkey; while Turkish theologians invited by the unofficial muftis are said to be denied entry to Greece. Likewise, some of the Muslims of Turkish descent reject any identification as Greeks and claim to be Muslim Turks; while the Greek authorities, who in the past reportedly prohibited any Turkish designation of associations, do not recognize the existence of Turks in Greece but only of Greeks of Turkish descent.

121. The status of the Muslims in Thrace therefore has both a political and a religious explanation, and religion is often an instrument of politics and the arena for intolerance and discrimination.

B. Situation of the Orthodox Church

122. In addition to the information provided in the parts concerning legislation (chap. I) and the situation of religious minorities (chap. II, A), which reflects the comments of the representatives of religious minorities, non-governmental organizations concerned with human rights, and the authorities, the Special Rapporteur wishes to report on the views expressed by the representatives of the Greek Orthodox Church.

1. Religion

123. According to its representatives, the Eastern Orthodox Church of Christ is the dominant religion, in conformity with the Constitution, and enjoys the corresponding privileges, but this does not prevent the other religious communities from enjoying religious freedom.

124. The relations between the Orthodox Church and the State are perceived as being necessary, in conformity with the Constitution and because of the numerical importance of Orthodox Greeks and the historical role played by the Orthodox Church in the independence of Greece.

125. However, the Orthodox authorities claim that the Orthodox Church is in practice at a disadvantage vis-à-vis the religious minorities. The only privilege of the Orthodox Church is said to be the remuneration of the clergy, which in fact corresponds to reimbursement by the State for expropriated ecclesiastical property. The powers of the Orthodox Church have reportedly been restricted, in particular by changes in family law and the introduction of civil marriage. The muftis of the Muslim minority, on the other hand, are said to have retained their legal functions, which encompass family law and the law of

succession. Similarly, the number of signatures required for the construction of places of worship is allegedly much larger in the case of the Orthodox Church than in the case of religious minorities. Moreover, in practice the Orthodox Church is reportedly no longer asked to express an opinion on requests for the establishment of places of worship, in particular because of the decisions of the Council of State. However, the opinion of the dominant Church is said to be necessary insofar as it is allegedly in a better position to express views on the need for places of worship.

126. The principle of religious equality is said to exist for all the religious minorities but is allegedly more limited in the case of the Orthodox Church.

127. The Orthodox Church considers that the Jehovah's Witnesses are not a religion, but a sect which contests the divinity of Jesus Christ and the status of the Virgin and the Saints. The Orthodox Church says it is opposed, not to the religious conscience of the Jehovah's Witnesses, but to the propaganda methods they use vis-à-vis members of the Orthodox Church. The counteraction by the Orthodox Church is said to be based on the right to react morally against those who are hostile to the moral integrity of the members of the Orthodox Church and take advantage of the poverty and low cultural level of some of those members.

128. With regard to the failure to grant legal recognition to the Catholic archdiocese of Athens, the Orthodox authorities explain this as being necessary in order to avoid any confusion with the title of the Orthodox Archbishop.

129. Coexistence and dialogue between Muslims and the Orthodox Church are said to be progressing in a satisfactory way, except when interfered with by Turkish nationalist propaganda originating abroad.

2. Other spheres

130. With regard to the indication of religion on identity cards, the Orthodox Church favours an optional mention and considers this a necessary right for spiritual reasons.

III. CONCLUSIONS AND RECOMMENDATIONS

131. The Special Rapporteur has focused on legislation in the field of tolerance and non-discrimination based on religion or belief (chap. I) and on the implementation of this legislation and on the policy in force (chap. II). He has analysed both the situation of the religious minorities and that of the dominant Orthodox Church and their relations with the State.

132. With regard to legislation, the Special Rapporteur observes that the existence of a State religion is not in itself incompatible with human rights. However, this situation, which in the case of Greece is sanctioned by the Constitution, must not be exploited at the expense of the rights of minorities and the rights linked to citizenship, which imply prohibition of discrimination

among citizens on the grounds, inter alia, of considerations relating to religion or belief.

133. In that regard, from a constitutional point of view, although freedom of conscience is guaranteed, the Special Rapporteur notes that there are limitations on freedom of worship which are inconsistent with internationally established human rights norms. Article 13 of the Constitution limits freedom of worship to "known" religions, but the lack of any legal definition of the concept of "known religion" seems to be prejudicial; in particular, it does not seem to be in accord with the legal restrictions on religious freedom provided for in article 1, paragraph 3, of the 1981 Declaration. The Christian religious minorities are particularly affected by this situation; their legal recognition is often called in question, mainly in connection with matters relating to places of worship and conscientious objection. The Special Rapporteur recommends that the concept of a "known religion" should be defined precisely - either in the Constitution or, failing that, in legislation - in a manner consistent with the legal restrictions provided for in the 1981 Declaration; alternatively, if appropriate, the concept should be eliminated altogether.

134. The Special Rapporteur considers the constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration and stresses the need for greater respect for internationally recognized human rights norms, including freedom to convert and freedom to manifest one's religion or belief, either individually or in community with others, and in public or private, except where necessary restrictions are provided for by law. These comments also apply to the Necessity Acts concerning proselytism. Removal of the legal prohibition against proselytism is very strongly recommended. Failing this, proselytism could be defined in such a way as to leave appropriate leeway for the exercise of religious freedom.

135. With regard to legislation governing places of worship, the Special Rapporteur is in favour of abolishing the Necessity Acts and elaborating a new law which would dispense with the need to seek the opinion of the Orthodox Church for the construction of places of worship and would confer on the State the competence to guarantee religious freedom, limited only by such restrictions as are internationally accepted.

136. With regard to the legislation on identity cards, which provides for mention to be made of the holder's religion, the Special Rapporteur recalls the resolution of the European Parliament (see chap. I, B, para. 30) which considered this provision firstly, as a violation of the fundamental freedoms of the individual, particularly freedom of opinion and religious freedom, which are the exclusive province of the human conscience and, secondly, as a provision that should be abolished. The Special Rapporteur fully supports this resolution.

137. As regards the legislation governing conscientious objection, while acknowledging the efforts made by the Greek authorities, the Special Rapporteur recalls the relevant resolutions of the Commission on Human Rights (see chap. I, B, para. 40) and recommends the elaboration and adoption of legislation offering service of a non-combatant or civilian character, in the public interest and not of a punitive nature. In the event that a problem arises

concerning constitutionality, particularly with regard to article 4, paragraphs 1 and 6, concerning the equality of all before the law and the contribution of citizens to the defence of their country, the Special Rapporteur recommends a revision of the Constitution in order to include a provision guaranteeing the right of conscientious objection.

138. As for the special provisions concerning Muslims and, more particularly, muftis and waqfs, the Special Rapporteur recalls article 6, paragraph (g), of the 1981 Declaration, which guarantees freedom to "train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief".

139. The Special Rapporteur believes it necessary for the Greek authorities to comply fully and in good faith with the Treaty of Lausanne and with the country's international undertakings. He also recalls the need to refrain from interfering in the affairs of a religion, apart from the restrictions provided for in international law, and calls for respect for the traditions of each religious group within the framework of internationally recognized norms.

140. The Special Rapporteur also emphasizes that the status of the Muslims of Thrace, and in particular that of the muftis and waqfs, should not be subordinated to considerations concerning Turkey, and strongly urges the parties involved to comply with their international undertakings, especially the Treaty of Lausanne.

141. Lastly, regarding other legal issues, while noting the statements made by the Greek authorities to the effect that the International Covenant on Civil and Political Rights will be ratified as soon as possible, the Special Rapporteur believes it necessary to ensure that internal law is consistent with international law. With regard to the revision of the Constitution, the Special Rapporteur would like to see the necessary changes introduced in that context or set out in formal texts, with assurances that they will be interpreted in a manner consistent with religious freedom.

142. As regards implementation of the laws and policies in force, given the complexity of the situation, the Special Rapporteur in his analysis examined successively the Christian minorities (Catholic, Protestant, Jehovah's Witnesses), Jews and Muslims and their relations with the dominant Orthodox Church and the State.

143. In the religious sphere, the Christian minorities are facing a challenge to their legal recognition, with regard both to their places of worship and their right to conscientious objection.

144. With regard to places of worship, the Christian minorities are encountering severe difficulties in obtaining building permits because of the negative opinions frequently expressed by the Orthodox Church, which in practice are often binding on the authorities. The Necessity Acts are invoked in order to punish anyone responsible for illegal places of worship. Moreover, places of worship and religious objects have been the targets of sporadic attacks of vandalism.

145. With respect to cemeteries, Jehovah's Witnesses in certain localities are victims of acts of discrimination which should be combated by the State, since the more this community is threatened, the greater the State's responsibility.

146. As for religious education, while Catholics benefit from religious teaching in accordance with their beliefs, they sometimes experience difficulties in securing the establishment of posts for Catholic religious teachers. The faith of the Jehovah's Witnesses is also reported to be denigrated in Orthodox religious sermons. Nevertheless, the Special Rapporteur notes with satisfaction that minorities can be excused from Orthodox religious classes.

147. It is alleged that foreign non-European religious personnel experience problems in renewing their residence permits.

148. Moreover, Jehovah's Witnesses are heavily penalized for proselytism and conscientious objection, which are inherent expressions of freedom of belief.

149. Outside the religious sphere, it is alleged that the Christian minorities are generally disadvantaged with regard to education, despite some progress (except in the case of the Jehovah's Witnesses) and face discrimination in gaining entry to the army, the police force and other sensitive administrative or teaching posts.

150. Furthermore, the Christian minorities face a general climate of intolerance and often insidious attempts to marginalize them either directly or indirectly in the religious, educational, professional and other spheres. To some extent the dominant Orthodox Church and the State both bear a definite responsibility in this respect, since the State cannot evade its responsibilities under international law on the ground that a special status has been established for the Orthodox Church, which the latter frequently makes use of. Among the Christian minorities, the plight of the Jehovah's Witnesses seems to give the greatest cause for concern, insofar as adherents are convicted by the courts and subsequently fined or imprisoned, and also endure a degree of social ostracism which can take the form of physical or verbal aggression. This singling out of the Jehovah's Witnesses is almost certainly due to their religious militancy, which is expressed through proselytism, conscientious objection to military service and a variety of public demonstrations which call into question the interests of the dominant Church and the legislative and political system of the State.

151. With regard to the problems related to legal recognition, places of worship, proselytism and conscientious objection, the Special Rapporteur reiterates the recommendations he made with regard to the relevant legislation.

152. The Special Rapporteur considers the status of the Jewish minority in the religious and other spheres to be entirely satisfactory.

153. The Jewish community nevertheless joins with the other religious minorities in condemning the mention of religion on identity cards, which is a potential source of discrimination. The Special Rapporteur reiterates his recommendation regarding the legislation concerning identity cards.

154. As far as the Muslim minority in Thrace is concerned, the Special Rapporteur notes a static, unsatisfactory and prejudicial situation, especially in the religious sphere. The Muslim community in Thrace is beset with serious tensions and restrictions regarding the appointment of muftis, administration of waqfs and religious teachers. Priority should be given to satisfying the legitimate religious needs of the Muslims of Thrace, calming the present religious tensions and finding a way to defuse the situation that is acceptable to both the Greek authorities and the representatives of the Thracian Muslims. To this end, the Special Rapporteur reiterates his previous comments and recommendations on the relevant legislation in this area.

155. Regarding places of worship and cemeteries, the Special Rapporteur notes sporadic incidents of arson, vandalism and desecration which seem to be mostly acts of provocation and intolerance on the part of Muslim and Christian extremists. The Special Rapporteur condemns these isolated occurrences of religious extremism and reminds the State of its duty to guarantee the protection of places of worship and other religious sites.

156. The Special Rapporteur also encourages the removal of obstacles to the construction of mosques and notes with satisfaction the financial assistance made available for repairs and renovations.

157. With regard to education, the Special Rapporteur deplores the very low level of education among the Muslim minority in Thrace and welcomes the new legislation designed to make it easier for Muslim students to gain access to higher education. The Special Rapporteur hopes that this targeted policy will be extended to all levels of education including vocational training, thus ensuring that Thracian Muslims are no longer a disadvantaged and neglected group but will have the opportunity to integrate fully into Greek society and acquire true citizenship, thereby opening up new intellectual and cultural horizons.

158. Overall, the Special Rapporteur urges all parties concerned, official and otherwise, national and foreign, to calm rather than exacerbate religious problems, thereby ensuring that religion is not subject to political intrusion and exploitation and that constants are not affected by political variables. Such interference is detrimental to the religious rights of the Muslim community and, in a wider sense, to tolerance and efforts to stamp out discrimination based on religion and belief.

159. With regard to the Greek State, the Special Rapporteur wishes to make the following general recommendations:

(1) The Special Rapporteur recommends that the State should involve representatives of human rights organizations and lay and religious representatives from all religious minorities and the Orthodox Church in its religious affairs policy on a consultative basis. Such cooperation should result in a coherent religious affairs policy focused on tolerance and non-discrimination in line with the revised legislation and based on the principle of respect for the rights and freedoms of each religious community, regardless of whether it is a State religion or a minority religion.

(2) The State should also adopt and apply administrative, disciplinary, training and other measures in order to forestall and penalize any act of intolerance or discrimination on the part of the authorities, for example in matters having to do with access to administrative posts for members of religious minorities, permits for places of worship, respect in the school system for religious beliefs and convictions, and so forth.

(3) The Special Rapporteur believes that special efforts should be made to promote and develop a culture of tolerance and human rights. The Greek authorities could play an active role in increasing awareness of the values of tolerance and non-discrimination based on religion and belief. In this respect, the Special Rapporteur is firmly convinced that lasting progress could be made chiefly through education and especially through the schools by ensuring that school curricula, school textbooks and properly trained teachers disseminate a culture that promotes tolerance in the fields of religion and belief.

(4) In addition, because he noted problems of intolerance and discrimination in the fields of administration of justice and the media, the Special Rapporteur believes that it would be appropriate to make use of the Centre for Human Rights programme of advisory services (see E/CN.4/1995/91). Appropriate training of the personnel of the judicial system, the administration in general and the media in the areas of tolerance and non-discrimination based on religion and belief would be extremely useful.

(5) The Special Rapporteur also wishes to stress the importance of establishing a permanent interfaith dialogue between religious minorities and the Orthodox Church in order to combat all forms of intolerance and religious discrimination.

(6) Lastly, the Special Rapporteur reiterates the need to shield religious matters from political tensions and struggles so that religious freedom may express itself in characteristic contemplation and serenity, thereby benefiting all religious faiths, Greek society in general, religious freedom and human rights.

Notes

[1] The Special Rapporteur had no opportunity to meeting with Orthodox believers of the Old Calendar. As they refused to accept the new Gregorian calendar in 1924 and broke away from the Orthodox Church in order to create their own church, they have not been recognized and are in conflict with the official Orthodox Church.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Implementation of the Declaration on the Elimination of All Forms of Religious Intolerance and of Discrimination Based on Religion or Belief

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly addendum 2 of the interim report on the elimination of all forms of religious intolerance relating to a visit to the Sudan, prepared by Mr. Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights, in accordance with Assembly resolutions 50/183 and 50/197.

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I. INTRODUCTION

1. From 19 to 24 September 1996, the Special Rapporteur on religious intolerance visited the Sudan in the context of his mandate and at the invitation of the Government of the Sudan in accordance with General Assembly resolution 50/197 of 22 December 1995 and Commission on Human Rights resolution 1996/73.

2. He went to Khartoum and Omdurman and to Kaduqli in the Nuba Mountains. He held consultations with representatives of the authorities, in particular the Minister of Justice, the Minister for Social Planning, the Ministers of Education, Higher Education and Defence, the Minister for External Relations and the State Minister for External Relations.

3. He also spoke with the President of the National Assembly, Mr. Turabi, and with Christian and Muslim deputies.

4. The Special Rapporteur held fruitful consultations with religious and political representatives of Christian communities and various Muslim brotherhoods, including the head of the Ansar community, former Prime Minister Sadiq al-Mahdi. He also met representatives of non-governmental organizations and visited places of worship.

5. The Special Rapporteur wishes to thank the Sudanese authorities for having invited him and for their cooperation. He is also grateful to the numerous officials to whom he spoke during his visit.

6. At the time of his visit, the Special Rapporteur devoted particular attention to the study of legislation in the field of tolerance and non-discrimination based on religion or belief, its application and the policy in force, examining the situation of both non-Muslims and Muslims.

II. LEGISLATION IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Outline of legislation

1. Constitutional provisions

(a) Provisions relating to religious freedom

7. The first chapter of Constitutional Decree No. 7, promulgated in 1993 by the Revolution Command Council and entitled "Constitutional principles, rules and developments", contains the guiding principles of the policies of the State, which are divided into seven parts, including those relating to "Religion" and "Society".

8. Part 1, entitled "Religion", provides that:

> "Islam is the religion which guides the great majority of the Sudanese. It is the basis of the laws, rules and policies of the State. Every individual, however, is free to adopt other revealed religions, such as Christianity or traditional religious beliefs. Religious freedom shall be guaranteed by the State and its laws."

9. Part 6 concerning society stipulates: "Society shall be based on religious values and free development ...".

10. Constitutional Decree No. 7 and chapter II, part 1, thereof, entitled "Rights and duties", provides as follows:

> "It is the duty of a religious citizen to be honest and sincere. He has the right to choose his religion without constraint and not to be subjected to discrimination on account of his faith, beliefs or social or financial situation. Every citizen has the duty to make a contribution by way of his thoughts and opinions, and he has the right to express himself freely and participate in public life in accordance with the law. Every citizen has the right to earn his living on the basis of fair competition, and his possessions shall not be confiscated except in accordance with the law. Every citizen has the right to freedom of movement and residence."

11. The Political Charter of the Sudan (April 1996) includes the following principles:

> "Citizenship shall be the basis of rights and duties in furtherance of the values of justice, equity, freedom and human rights.
>
> "The Shariah and custom shall be the source of legislation. However, states may enact legislation complementary to the federal law in matters peculiar to those states.
>
> "Freedom of religion and belief shall be observed, and a suitable atmosphere shall be maintained for practising worship, da'wah, proselytization and preaching. No citizen shall be coerced into embracing any faith or religion."

(b) Provisions relating to federal government institutions

12. The provisions regulating federal government institutions are in Constitutional Decree No. 13, promulgated in 1995, and concern in particular the President of the Republic, the elected members of the National Assembly, the armed forces and the judiciary.

(i) President of the Republic and elected members of the National Assembly

13. The conditions for election to the office of President of the Republic and of member of the National Assembly are provided for under articles 4 and 28 respectively of Constitutional Decree No. 13. Such conditions include no religion criterion.

14. Concerning oaths of office, pursuant to article 4 of the Decree, the President of the Republic must declare as follows:

> "I swear by Almighty God to hold the office of President of the Republic in full worship and obedience of God, carrying out my duties diligently and honestly and working hard for progress and promotion of the country. I swear by Almighty God to respect the Constitution, the law and public opinion and to accept consultation and advice. God witnesses and God is the best witness."

15. Article 31 of the Decree on the oath of deputies stipulates:

> "Every member shall, before performing his duties, take before the National Assembly the following oath: 'I swear by Almighty God that I will represent the people as a member of the National Assembly in obedience to God ... I know God is witnessing what I am saying'."

(ii) Armed forces

16. Pursuant to article 12 of the Decree:

> "The armed forces are a national and disciplined body. Their duty is the jihad and defence of the country against external and internal dangers and protection of the nation and her civilized leaders and the organization thereof shall be determined by law."

(iii) The judiciary

17. Article 61 of the Decree provides that:

> "A judge shall abide by the principle of supremacy of the Constitution, the law and the general norms of the Shariah, and he shall adhere to this principle without fear or favour of anyone save God."

2. Other legal provisions

(a) The Penal Code of 1991, hudud offences and other offences relating to religion

18. The Penal Code of 1983 was repealed and replaced by the Penal Code of 1991, promulgated by the Revolution Command Council of National Salvation in accordance with the provisions of the Third Constitutional Decree (1989).

(i) Hudud offences

19. Hudud offences are those of drinking alcohol, apostasy (harabah), adultery (zina), false accusation of unchastity, armed robbery and capital theft. This criminal legislation derived from Islam defines the above-mentioned religious offences and authorizes the imposition of Islamic punishments, including flogging and amputation, according to the seriousness of the offence. Pursuant to the Penal Code of 1991, such provisions are not applicable to the southern

states "unless the accused himself requests application of the said provisions to him or the legislative body concerned decides to the contrary".

20. Concerning apostasy, article 126 of the Penal Code stipulates:

> "1. Every Muslim who advocates the renunciation of the creed of Islam, or who publicly declares his renouncement thereof by an express statement or conclusive act, shall be deemed to commit the offence of apostasy.
>
> "2. Whoever commits apostasy shall be given a chance to repent during a period to be determined by the court; if he persists in his apostasy, and is not a recent convert to Islam, he shall be punished with death.
>
> "3. The penalty provided for apostasy shall be remitted whenever the apostate recants his apostasy before execution."

21. Alcohol-related offences fall under articles 77 to 79 of the Penal Code, whereas the offences of adultery, false accusation of unchastity, armed robbery and capital theft fall respectively under articles 145 to 147, 157 and 158, 167 to 169 and 170 to 173.

(ii) Other offences relating to religion

22. There are three main offences: insulting a religious creed, defiling and disturbing places of worship, and profaning the dead and desecrating cemeteries.

23. According to article 125 of the Criminal Code:

> "Whoever by any means publicly abuses or insults any of the religions, their rites or beliefs or ceremonies, or seeks to excite feelings of contempt and disrespect against the believers therein, shall be punished by imprisonment for a term not exceeding one year or by a fine or a whipping, which may not exceed 40 lashes."

24. With regard to places of worship, according to article 127 of the Criminal Code:

> "Whoever destroys or defiles any place of worship or any object held sacred by any group of persons, or obstructs or disrupts any religious assembly without lawful reason, intending thereby to insult that religion or group of persons, shall be punished by imprisonment for a term not exceeding one year or by a fine or by both."

25. Lastly, article 128 of the Criminal Code states:

> "Whoever desecrates any cemetery or graves or profanes any human corpse or commits any act or action that violates the sanctity of death without religious or legal excuse, or intentionally disrupts any ceremony of persons assembled for the performance of funeral rites, shall be punished by imprisonment for a term not exceeding one year or by a fine or by both."

(b) Legislation on religious matters and Islamic religious endowments (awqaf)[1]

26. The legislation on religious matters and Islamic religious endowments (1980) regulates the appointment of a Grand Council on Religious Matters and Islamic Religious Endowments, the purpose of which is:

> "To preserve religious values and enhance the understanding and practice of such values in society in order to draw closer to God and benefit society ... An effort shall be made to preserve the cultural identity of the nation and to guide it in the direction of the Islamic way of life, while giving due attention to the rights of those who are not Muslims and demonstrating in this regard flexibility and a progressive approach."

27. The Council's functions include: promulgation of policies, plans and programmes relating to religious matters and Islamic religious endowments; general supervision of religious institutions and places of worship and organization of their activities with a view to their optimum use, in order to serve the purposes of religion in worship and in social relations; general monitoring of religious activities, including guidance and regulation of their organization; and promotion of Christian activities and those of other religions and beliefs in cooperation with public organizations and institutions working in this field.

(c) Legislation on education

28. In accordance with Act No. 24 on public education (1992), the following are the objectives of public education: consolidation of belief and religious morality, inculcation of the teachings of religion, and education based on those teachings designed to produce free and responsible believers. Religious education is moreover obligatory at all levels of education.

(d) Legislation on nationality, marriage, and identity and travel documents

29. Documents provided by the Ministry of the Interior of the Sudan concerning the acquisition of Sudanese nationality indicate that the Nationality Code (1993) contains no conditions connected with the religion of the applicant. The same Ministry's naturalization statistics show that in 1992 and 1993, 406 of the 535 successful applications for naturalization were made by Christians.

30. The 1926 legislation on the marriage of non-Muslims provides that the State recognizes the marriage of non-Muslims regardless of whether such marriage is contracted in accordance with the requirements of other religions, existing pagan religions or tradition.

31. Under 1981 legislation, amended in 1995, the right of every Sudanese citizen to an identity card is not subject to any condition connected with religion. Exactly the same applies to the issue of ordinary Sudanese passports in accordance with the legislation on travel and immigration.

32. Furthermore, application forms for Sudanese nationality, identity cards and passports do not contain any mention of religion. The entry and residence of

foreigners are subject to strict legal regulation but, according to the documents of the Ministry of the Interior, are not affected by the religion of the person concerned. The same applies to applications by Sudanese for exit visas.

(e) Legislation on refugees

33. According to the Ministry of the Interior, under Sudanese law all refugees enjoy non-discriminatory treatment with respect to religion and belief.

(f) Legislation on the treatment of prisoners

34. According to the information provided by the Ministry of the Interior, Sudanese legislation and regulations on prisons and corrective institutions guarantee prisoners non-discriminatory treatment, including in matters of religion; this treatment respects the right to pray according to one's religion or belief in an appropriate place designated for this purpose.

35. With regard to Sudanese legislation in general, the authorities have indicated that efforts have been made to combat religious fanaticism and promote tolerance, in order to counteract the dangers of the spread of fanaticism in social life and its adverse effects on stability, equality and justice.

B. Concerns of the Special Rapporteur about certain types of discrimination and differentiation

1. Constitutional provisions

(a) Provisions relating to the President of the Republic and the elected members of the National Assembly

36. The Constitution contains no provisions barring non-Muslims from posts in the executive or the legislature. In accordance with articles 4 and 31 of Constitutional Decree No. 13, the President of the Republic and the elected members of the National Assembly must swear an oath before God on taking office.

37. The Minister of Justice and the Minister for Religious Endowment have stated that citizenship is the frame of reference and the basis of all rights, with respect in particular to access to posts in the executive and the legislature, without any religious discrimination or any link between citizenship and religion. Mr. Turabi has added that Sudanese legislation contains no condition connected with religion affecting access to the position of deputy, as is demonstrated by the presence of Christians in the Parliament, in contrast to the position of Muslims in the parliaments of European countries.

(b) Provisions relating to the armed forces

38. According to Constitutional Decree No. 13, the duty of the armed forces is the jihad. The Islamic religious term "jihad" prompts questions as to its offensive meaning (holy war against unbelievers, i.e. non-Muslims) or defensive meaning (against an attack) and thus about the place of non-Muslims in the army

and respect for their beliefs and more generally for the beliefs of non-Muslims in the Sudan.

39. According to the Ministry of Defence, the legislation relating to the armed forces guarantees the principle of non-discrimination on the basis of religion or belief by, on the one hand, granting all adult Sudanese citizens access to the army, as is shown by the presence in the Sudanese armed forces of Muslims, Christians and pagans and, on the other, providing that any soldier, whatever his religion or belief, may be promoted. Furthermore, the religious rights of the military, including prayer, are respected throughout the Sudan. Lastly, the Minister of Defence declared that there was no jihad in the southern states, but rather a non-religious conflict, and explained that the army's mandate was to defend the country and not to force the south to convert to Islam.

40. The President of the National Assembly, Mr. Turabi, stressed that Islam was against all constraint in regard to religion and that Islam called for respect for minorities. The term "jihad" should be understood as meaning defence, not aggression. According to Mr. Turabi, a further concern is to maintain a disciplined army, controlled by God and the State, for the defence of the public.

(c) Provisions relating to the judiciary

41. Under Constitutional Decree No. 13, judges should be guided by the Constitution, the law and the general norms of the Shariah.

42. The Special Rapporteur wanted to know about the role of custom, and more precisely the force of the customary law of the peoples of southern Sudan, and also about possible contradictions between the Shariah and customary law. For example, in the Shariah, the equivalent of a bride price must be returned to the husband upon divorce. In Dinka customary law, bride wealth is the property of the wife's relatives and they keep it upon divorce. However, according to several non-governmental observers, a judge sentenced a wife to prison because her family refused to return the bride price to her ex-husband although neither she nor her husband was a Muslim. The judge thus applied the Shariah to non-Muslims despite the existence of codified Dinka customary law.

43. The Minister of Justice, the State Minister for External Relations and the Chief Justice and Chairman of the Kaduqli Human Rights Committee declared that the customs of the southern populations were respected.

2. Other legal provisions

(a) The Penal Code of 1991 and hudud offences

(i) Scope of the principle of non-applicability of hudud offences to the southern states

44. According to the Penal Code of 1991, the provisions relating to religious offences are not applicable to the southern states. The Special Rapporteur noted, however, that this non-applicability is not fully guaranteed because, on

the one hand, the legislative body concerned is empowered to take a contrary decision and, on the other, it is not extended to non-Muslims residing outside the southern states. The non-application of the provisions relating to religious offences is thus carried out on a territorial rather than a religious basis, which means that the Shariah can be legally imposed on non-Muslims in the north. Thus, according to some non-governmental observers, many non-Muslim women from the south, living as refugees in northern Sudan, have been whipped and/or arrested for trading or for consuming alcohol.

45. The State Minister for External Relations explained that the Government had reached a compromise which was reflected in the Penal Code. This ensured both the application of the Shariah to a mainly Muslim population and respect for the rights of non-Muslims by refraining from imposing the Shariah in the southern states and by taking their customs into consideration. It was recognized that difficulties had arisen owing to the mass arrival of people from the south, who were fleeing the war and establishing themselves in the mainly Muslim north, where the freedoms specific to the southern states in, for example, alcohol-related matters are not available to them.

46. While underlining that the law was applied without religious discrimination and with respect for the rights of non-Muslims, Mr. Turabi explained that consumption of alcohol was not a crime in the southern states, while in the north it was authorized for non-Muslims in private and forbidden in public.

47. The Minister of Justice added that the Sudanese State was based on the Shariah, which was characterized by tolerance, but the Shariah and hudud offences were not applied in the south, even though the majority in that region was not Christian. In other words, the ban on alcohol was lifted in the south not only for non-Muslims but also for Muslims.

(ii) The special case of conversion

48. Regarding conversion, the Special Rapporteur noted that no limitations are placed on non-Muslims who wish to convert to Islam, whereas serious restrictions are applied to Muslims who change religion and who could be condemned to death as apostates for any public manifestation of their conversion.

49. Mr. Turabi and the Consultative Human Rights Council stated that conversion for Muslims was accepted but could not be manifested for fear of disturbing public order.

50. Regarding conversion, the Special Rapporteur wishes to recall general comment No. 22 (48) of the Human Rights Committee dated 20 July 1993 concerning the freedom to "have or to adopt" a religion or belief of one's choice (see para. 139).

(b) Legislation on public order and the treatment of prisoners

51. According to information received, the Public Order for Khartoum Act (November 1992) stipulates certain restrictions for women, such as separation from men in public transport, and a ban on selling food or drink in streets or public squares from 5 p.m. to 5 a.m. The legislation regulating public order is

stricter outside Khartoum. At Wad Medani, the Public Discipline and Conduct Act No. 2 (1992) establishes the obligation of an Islamic dress code for women on pain of punishment by whipping and/or a fine for any Muslim woman who does not respect this regulation in public life.

52. The Organization of Prisoners and Treatment of Inmates Act (1992) provides for the early release of prisoners who learn the Koran by heart. A commission supervised by the prison authorities in consultation with the Minister for Religious Endowment tests a prisoner's knowledge of Islam and makes recommendations on early release. Many non-governmental observers see this legislation as inciting non-Muslims to convert to Islam, since there is no legal provision for early release based on knowledge of non-Islamic religions.

53. The Minister of the Interior insisted that no discrimination was practised towards prisoners, particularly in the context of the legislation. It was explained that the release of prisoners was not tied to religious criteria, although religious feast days were often marked by releases: that is, Christians were released when their religious feasts were celebrated, and Christian and Muslim prisoners were released when Muslim feasts were celebrated.

(c) Legislation on education

54. The Special Rapporteur notes that religious education is compulsory in public schools and is determined by the religion of the pupils. The relevant legislation in this area does not seem to allow for any dispensation from religious instruction, an omission that appears to raise problems with regard to people's free will.

(d) The repeal of the Missionary Societies Act (1962), the Provisional Order of 4 October 1994, the Aliens' Voluntary Work in the Sudan (Organization) Act (1988) and the Societies Registration Act (1957)

55. In October 1994, the Sudanese authorities repealed the Missionary Societies Act passed in 1962 to expel foreign Christian missionaries. This legislation was intended to curb drastically the activities of missionaries by means of a licensing system.

56. Nevertheless, the President of the Sudan subsequently introduced the Provisional Order of 4 October 1994, which was intended to regulate the activities of the churches. As a result of this new legislation, churches were classed no longer as spiritual institutions but instead as foreign non-governmental organizations obliged to follow a registration procedure under which a State official could exercise control by approving or turning down applications.

57. The Provisional Order modified the Aliens' Voluntary Work in the Sudan (Organization) Act (1988) and the Societies Registration Act (1957) by regulating foreign non-profit organizations and domestic non-governmental organizations, respectively, for the purpose of including religious organizations.

58. According to non-governmental reports, the Provisional Order would have required all churches existing before October 1994 to apply for registration to the Commissioner of Social Planning within 60 days. It would have required each new congregation of existing churches to register as new and separate churches. The Commissioner would have the power to accept or reject the application, forwarding it to the Minister for Social Planning for approval of the rejection or registration or fulfilment of conditions. If the conditions were not fulfilled by the church within 90 days, it would cease to function and its assets would be disposed of by liquidation.

59. The requirements for churches under the Provisional Order appear to be identical to those for an ordinary foreign non-profit corporation: to submit an annual statement of accounts to the Minister, hold annual meetings, file a membership list, elect officers as set forth in its by-laws and so forth. These requirements would not be limited to the relief and development programmes of churches but would be extended to the churches themselves, as spiritual institutions. The Minister would have the power to cancel a registration if a church contravened the provisions of the Order. He could cancel a registration if a church's total membership was less than 30.

60. The churches were vociferous in their disapproval of this legislation and refused to follow the registration procedure. Nevertheless, the present status of the Provisional Order, and whether it has been revised, abolished or retained, is not known, which raises problems with regard to the legality of churches.

(e) Legislation on travel documents

61. Many non-governmental representatives emphasized that Sudanese nationality was available to any Muslim, whatever his country of origin, but especially to foreign Muslim extremists, who were able to travel on Sudanese passports, including diplomatic passports.

62. The Minister of Justice said, in reply, that no Sudanese law permitted Sudanese nationality to be acquired by any foreign Muslim and that the criteria on which decisions on nationality were based included residence in the Sudan but not religion or belief, in accordance with the relevant legislation in force.

III. IMPLEMENTATION OF LEGISLATION AND POLICY IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

63. Reports from non-governmental sources claim that the Sudanese authorities are implementing a policy of Islamization and Arabization of the Sudan through religious and political persecution of not only non-Muslims (Christians and animists), but also Muslims, in all religious and other social spheres. Islam is, in fact, being exploited for political ends in the pursuit of power, not only in the national arena but also beyond it, through the funding of acts of violence and sometimes terrorism outside the Sudan. Any Muslim who questions official policy is therefore regarded and treated as an apostate or even a traitor, while non-Muslims are considered infidels and unbelievers. The war in

the southern states, originally a civil war of a political nature, has been turned by the authorities into a jihad as a result of their programme of ideological indoctrination and their policy of oppression.

64. Non-governmental organizations claim that international pressure, particularly from the United Nations, and the growing political and economic weakness of the country have forced the Sudanese Government to make some changes for the better, particularly in the religious sphere. However, this development appears to be a tactical switch focusing on a new kind of political message and public relations, without effect on the essential nature of the regime.

65. According to the authorities, however, the Sudan is a model of tolerance whose legislation and policies are characterized by respect for religion and belief and coexistence within Sudanese society based on the principles of citizenship, equality, justice and human rights. In their opinion, criticism of the Sudan is due to a lack of understanding of the country's unique character and to the fear elicited by any new regime experimenting with its own societal model and asserting its independence in the face of the interests of the great Powers, which want to impose their lifestyles on the international community as a whole.

66. The Special Rapporteur notes the diametrically opposed conclusions of the Government and the non-governmental organizations concerning the situation in the Sudan with respect to tolerance and non-discrimination based on religion and belief. In the context of this section on the implementation of legislation and policies and the effect on freedom of religion, the Special Rapporteur studied the situation of both non-Muslims and Muslims.

67. Exact figures on the size of the various Muslims and non-Muslim communities were not available. The Minister for Religious Endowment stated that he had no data on the religious make-up of the Sudan. Yet while meeting with the Minister of Justice and the Consultative Human Rights Council, the Special Rapporteur was informed that a census that included questions about religion had established that the population was 85 per cent Muslim, the rest being animist and Christian. After the Special Rapporteur studied and compared the information available, the following estimates were put forward during discussions with officials and non-governmental groups: approximately 70 per cent Muslim (mostly Sunni), approximately 15 per cent Christian, and approximately 15 per cent animist.

68. Figures concerning non-Muslims are very approximate, with some non-governmental sources estimating the animist population to be larger than the Christian population. In addition the authorities stressed that southern Sudan was mostly animist and non-Christian (estimates by the Minister for Religious Endowment: 79 per cent animist, 11 per cent Muslim, 10 per cent Christian; estimates by the Minister of Defence: 65 per cent animist, 18 per cent Muslim, 17 per cent Christian).

69. Finally, some non-official sources report a large-scale immigration of the Christian population since the new regime took power in 1989, because of disagreement with the policies adopted and for economic reasons.

A. Situation of non-Muslims

70. The Special Rapporteur wishes to point out that during preparations for his visit and during the visit itself, he was able to obtain more information about the Christians than about the animists, no doubt because the Christian communities are better organized and structured and are supported by national and international non-governmental organizations.

1. Religion and belief

(a) Religious and animist activities

71. According to many non-governmental observers consulted in private, the official policy of Islamization and Arabization, which also incorporates the notion of jihad in its offensive meaning of holy war against the infidels, has resulted in the repression of Christian and animist religious activities with a view to their elimination and replacement by the official, Muslim religion.

72. In addition to attempts to strictly control Christian religious activities with legislation such as the Provisional Order and the modification of the Aliens' Voluntary Work in the Sudan (Organization) Act (1988) and the Societies Registration Act (1957), the Government is in fact reported to be interfering in the area of religion and belief by imposing limitations and constraints on non-Muslim religious officials, believers and places of worship (see paras. 126-132).

73. The authorities are also said to be blocking the development of Christian activities by strictly limiting religious observances to believers, thus preventing any proselytizing, especially of Muslims, under pain of punishment and arrest (ibid.). According to many non-governmental sources, converted Muslims are subject to pressure and close surveillance, the intention being to force them to abandon their religious activities and return to Islam. Religious officials are also said to face severe restriction of their freedom of movement and action with respect to travel within the Sudan and abroad and in some cases because they have been arrested by the security forces (ibid.).

74. It should be pointed out however that recently, according to some non-governmental sources, obstacles to free movement around the country seem to have been removed not only for Sudanese religious officials but also for foreigners visiting the Sudan. Furthermore, some Christian officials have recently been granted some freedom in the matter of religious publications, including the Bible, allowing them to serve the needs of their community.

75. The Christian and animist communities are nevertheless reported to be still subject to constraints, on the one hand because of the application of hudud outside the southern states and, on the other, by being pressured or forced to convert to Islam.

76. According to unofficial reports, non-Muslims outside the southern states have been found guilty of and punished for religious offences based on Islam

(hudud), especially for failing to observe the Islamic dress code and the prohibition of the sale or consumption of alcohol.

77. The non-Muslims who left the south because of the war and who are now living in displaced persons' camps are said to be under great pressure to convert to Islam in exchange for facilities and food, or even financial assistance, provided by Islamic humanitarian non-governmental organizations including the Da'wah Islamiyah, which enjoys special support from the State.

78. Non-Muslim children are said to be kidnapped in the streets and forced to convert to the Muslim religion in Islamization centres. Moreover, in the "peace camps" created by the authorities in the southern states, non-Muslims, especially children, are reportedly subject to religious indoctrination and even circumcision and Arabization of their names, and eventually forced conversion to Islam. Those converted are then expected to become Muslim fighters in the jihad and are even used as slaves, according to non-governmental sources, although their reports are often inconsistent.

79. The authorities and the non-governmental observers consulted in an official context maintained that there was complete freedom of religion, excluding any discrimination or intolerance towards non-Muslims, in a context of coexistence between the Muslim and non-Muslim communities. They said several times that Islam was against enforced compliance of any kind and that accusations of Islamization of the south, application of the Shariah to non-Muslims, circumcisions, forced or induced conversions and slavery were therefore quite unfounded. They also observed that in the Sudan, all were free to choose their religion or belief, this being a private matter, and that churches were proselytizing and humanitarian missionary organizations were providing assistance in order to convert people to Christianity. During a meeting at the Ministry of the Interior, a high-level prison official stated that, for the sake of public order, religion should be practised in the place of worship and not in the street. It was, however, possible to obtain official authorization for a public religious ceremony. The authorities also maintained that the problems in the southern states were purely political but that the rebels used the religious argument in order to get foreign assistance. During a meeting organized by the authorities in Kaduqli, in response to a question from an official, our interlocutors maintained categorically and unanimously that there was no intolerance or discrimination in the Sudan, notwithstanding any evidence to the contrary.

80. Some non-governmental representatives consulted officially stated that there had been abuses in the area of religion when the regime took power in 1989 but that the situation had gradually improved. While admitting that religious fanaticism did exist, they explained that it was not the result of State policy but rather of the isolated actions or conduct of individuals or groups of individuals, including civil servants.

81. Finally, several officials felt that non-Muslims enjoyed religious privileges.

(b) Places of worship and religious institutions and objects

82. All the non-governmental representatives consulted in private, were quick to denounce the intolerable situation concerning non-Muslim places of worship.

83. For years, they explained, all requests for building permits for places of worship had been rejected, explicitly or tacitly, by the authorities. Consequently, non-Muslim communities, while acknowledging the existence of many old places of worship, could not build additional places of worship in order to meet the needs of their members. The number of mosques built had increased strongly, however. Non-Muslims thus received unequal treatment from the Government of the Sudan.

84. Religious organizations, mainly foreign ones, also encountered serious difficulties in leasing buildings to be used as places of worship, as the owners expressed fears about the reaction of the authorities.

85. In addition, non-Muslim communities were required to pay fees to the State for their places of worship and religious objects.

86. Lastly, many non-governmental representatives specifically drew the Special Rapporteur's attention to the destruction of places of worship in the Sudan. In the war-torn southern states, they stated, non-Muslim places of worship had been destroyed by the Sudanese army, mainly during aerial bombardments, and by arson committed by groups of Muslims with ties to the regime. The police took no action to stop or investigate such attacks.

87. It was reported that outside the southern states, in the displaced persons' camps, mainly in the Khartoum area, non-Muslims had erected tents or very modest dwellings to serve as places of worship. Nevertheless, the authorities had prohibited those unauthorized places of worship and had proceeded to demolish them in the context of urban development and housing programmes, but without providing compensation in the form of building sites for churches. Such demolitions had occurred at Shigla El Hag Yusif, Fetihab and Umbada, among other places. During his visit, the Special Rapporteur was able to obtain from non-governmental sources a letter dated 8 September 1996 from the Ministry of Regional Development, ordering the Christian Church of the Sudan to demolish an unauthorized church in the governorate of Krra.

88. Lastly, places of worship outside the south were also said to have been targeted by Muslims committing arson. For instance, the Catholic prayer centre at Jebel Aulia was burned in November 1995.

89. The authorities refuted the above allegations concerning places of worship. To that end, the Special Rapporteur was provided with extensive and detailed documentation offering statistical proof of the large number of non-Muslim places of worship and religious institutions (see the table entitled "Christian activities in the Sudan" in the annex) and attesting, according to the authorities, to the religious tolerance of the Sudanese State. Requests for building permits for places of worship would not encounter any obstacles so long as they met the requirements relating to a sufficient number of worshippers. The Council for International Friendship indicated that, as in any country,

there might be opposition to such requests from extremists occupying seats on the town councils, but that efforts would be made to eliminate it.

90. The Minister of Defence rejected the allegations that non-Muslim places of worship in southern Sudan had been destroyed by the Sudanese army, citing, in particular, Islam's recognition of and respect for all places of worship.

91. The authorities confirmed the destruction - strictly in the context of urban development and housing programmes - of illegal places of worship belonging to all religious groups, including Muslims, but stressed that compensation had been provided for the building of new places of worship.

92. The government spokesman added that the State had contributed financially to the building of non-Muslim places of worship. The Council for International Friendship admitted that arson was sometimes perpetrated against churches but felt that the incidents were isolated acts of extremists.

2. Education

93. Non-official spokesmen deplored the implementation of an educational policy of Islamization and Arabization which adversely affected the religious, cultural and ethnic diversity of the various Sudanese communities.

94. Among the problems mentioned were the following: on the one hand, discrimination against Christian teachers in the public schools and the pressures faced by non-Muslim pupils to study the Koran and by young Christians and animists to comply with the Islamic dress code; on the other hand, the closing by the authorities of some Christian, Coptic and Armenian schools in northern Sudan and the Islamization of non-Muslims in the displaced persons' camps through schools administered by non-governmental organizations which received preferential treatment from the Government.

95. Moreover, numerous sources of information confirmed the abduction of non-Muslim children, who were subjected, without the consent of their parents, to an Islamization programme carried out by the Koranic schools of central and eastern Sudan, particularly the Karia Hannan Koranic school. In August 1996, for instance, approximately 100 Dinka children were transported by Islamists from Bor to the north to be Islamized. In early 1996, Christian children from the Nuba Mountains were also abducted in the Kaduqli area and placed in a Koranic school in the town of Um Ruaba.

96. Some non-governmental and foreign spokesmen believed that the Government's Islamization and Arabization policy was aimed at uniting the Sudan by increasing its integration and consolidating within it a nation capable of providing firm support for the regime.

97. The Minister of Education explained that the goal of education was to build religious character, regardless of belief. To that end, while maintaining private schools for the non-Muslim communities, the authorities had decided to institute compulsory religious education in the primary and secondary schools,

with due respect for individual beliefs. It was explained that the Shariah was not applied in the south and was not included in school curricula.

98. The Minister of Justice added that religion was a basic academic subject in which competence must be demonstrated by means by an examination in order to obtain a study certificate.

99. With regard to the Arabization policy, the Minister of Education noted that it had been instituted in 1965 and had made it possible to unite the Sudanese, who spoke several different languages.

100. Lastly, the authorities stressed again that Islam was characterized by religious tolerance and a prohibition against coercion, particularly in respect of conversions, and that such tolerance was traditional in the history of the Sudan.

3. Employment and social and cultural matters

101. Talks with the non-governmental representatives conveyed a very distinct impression that many non-Muslims felt themselves to be second-class citizens, whose rights - perceived, rather, as privileges by the authorities - were not commensurate with their duties.

102. The non-governmental spokesmen declared themselves to be victims of marked discrimination in such areas as employment and access to the broadcast media, and in Sudanese society in general, owing to the official policy of Islamization and Arabization and to the holy war against infidels or unbelievers (jihad, a term first used by the Government in 1990, even though the conflict with the southern states had been going on for some years).

103. Non-official representatives with whom meetings were held in an official context explained that the State recognized the right of non-Muslims to apply their religious law in personal matters (marriage, inheritance, etc.) and that non-believers enjoyed respect for their personal status in accordance with their tradition.

104. The authorities, including the Minister of Justice and the Minister for Religious Endowment, stressed the absence of religious discrimination, noting that citizenship was the frame of reference in the Sudan and that no religious group enjoyed a monopoly at the expense of other groups, as shown by the presence of non-Muslims in the Government, Parliament, the administration and the armed forces. Lastly, according to the official spokesmen, the Sudan was a model of tolerance, ensuring the same rights for all and even granting privileges to non-Muslims.

4. Protection of the individual

105. According to numerous non-governmental sources, non-Muslims are subjected to religious persecution, particularly in the context of the armed conflict in southern Sudan. Grave violations of human rights were being committed in the

southern states, including massacres of civilians, extrajudicial killings and summary executions, ill-treatment and torture, rape, and abductions of women and children, who were being forcibly converted to Islam and/or treated as slaves, for which responsibility fell mainly on the Sudanese authorities. Some of those violations, with certain exceptions, for example, forced conversions to Islam, were also attributable to parties to the conflict in the south other than the Sudanese Government and did not constitute religious persecution by the guerrilla movements.

106. Outside the southern states, it was stated, non-Muslims were subjected to close police surveillance, and children were abducted for the purpose of forcible conversion to Islam. Muslims who had converted to Christianity were harassed by the security forces, as were religious leaders, who were particular targets of arbitrary arrest. Thus, in August 1996, two Catholic priests, Father Roko and Father Elias, were arrested by the security forces for having preached against Islam in their Sunday sermons. They were recently released.

107. The authorities recalled their policy of tolerance and respect for the rights of non-Muslims. The Minister of Justice explained that no one was sentenced and detained for his beliefs, but only for committing offences. The Minister of Defence noted that all defendants had the right to a trial and that justice was administered in accordance with the rules of law (particularly respect for the presumption of innocence). Lastly, the violations referred to above that had been committed in the south were ascribed by the authorities to the rebels.

B. Situation of Muslims

108. The Special Rapporteur wishes to point out that, during his visit, he was able to gather information concerning the various Muslim political and religious communities in the Sudan, particularly the Ansar order.

1. Religion

109. According to numerous non-governmental observers, the authorities had usurped the religious sphere, claiming that they alone were in possession of divine truth, and had perverted religion by politically exploiting Islam in order to secure their grip on power and enforce their authority through religious and political persecution and totalitarian methods, in complete contrast to the historically tolerant Muslim heritage of the Sudan.

(a) Religious activities

110. The non-governmental representatives complained about strict official control of the religious activities of the various Muslim communities. Sermons could not be prepared freely by the imam in charge but had to be submitted to a special committee established by the authorities for the purpose of exercising control and thus ensuring a religious message consistent with the official instructions. Moreover, imams who refused to comply with government orders were prevented by the security forces from preaching sermons in the mosques; that

applied, in particular to Sheikh Abdullah Amin, of the Medina mosque; Sheikh Awad Jalal, of the Sheikh Mustafa Amin mosque; Sheikh Mustafa Khalifa, of the Haj Idris mosque; Sheikh Jaafar Sherif, of the Shems mosque; and Sheikh Muhammad Nur, of the Port Sudan mosque.

111. Preachers were exhorted by the authorities to use their sermons to ensure that believers remained loyal to the regime. All who refused were punished by being evicted and replaced with government-appointed imams.

112. Moreover, according to some reports, the authorities strove to echo Iranian concerns alien to the Sudanese Sunni Muslim faith. Training camps for foreign Muslim extremists, originally intended for the organization of violent actions outside the Sudan, were now being used, owing to the weakening of the State and to international pressure, for domestic repression alien to local Islamic traditions.

113. Lastly, it was maintained that religious leaders who did not conform to official policy were subjected to measures of harassment, curbs on their freedom of movement, arrest, arbitrary detention and ill-treatment (see paras. 126-132).

114. The authorities stated that the Sudan was a model of religious tolerance and coexistence among the various religious communities. On the subject of Islam, it was stressed that religion meant civilization and the presence of God in all aspects of life. Accordingly, religion should not be confined exclusively to the private sphere and, in particular, to the mosques. Furthermore, Islam excluded all types of coercion and accorded freedom to all. That concept of Islam therefore tended, according to the authorities, to invalidate allegations regarding the authorities' strict control over religious matters in Muslim brotherhoods and perversion of them for political ends, as well as the information concerning terrorism.

115. The official representatives felt that there was no religious crisis in the Sudan. They explained that the allegations of religious persecution of Muslims were propaganda by the Sudanese Muslim opposition, which wanted to seize power and objected to questioning of its autocratic control of the land and wealth of the Sudan. According to the authorities, the opposition therefore uses the argument of religion for political purposes. At the same time, these internal conflicts are allegedly exploited by the major Powers, which do not accept the societal model or independence of the Sudan.

(b) Places of worship and religious institutions and objects

116. According to non-governmental organizations, there have been major attacks on places of worship and religious institutions and objects. In the southern states, the allegations made regarding the destruction of non-Muslim places of worship following bombardment by the Sudanese army and arson attacks perpetrated by Muslim groups with ties to the Government are said to be relevant with regard to mosques as well. Cases of desecration of mosques have also been reported to the Special Rapporteur. The attacks are alleged to result from the central Government's official policy imposing "its truth regarding Islam on an erroneous local version of Islam" and therefore to have religious legitimacy, as demonstrated by, inter alia, the fatwa of April 1992 (see para. 122).

117. Outside the southern states, no case of destruction of a mosque has been brought to the attention of the Special Rapporteur other than demolition in the context of urbanization plans. The attacks on the places of worship of various Muslim brotherhoods are said to result from official confiscation measures and acts of desecration by the armed forces or the police.

118. For example, with regard to the Ansar community, in May 1993 the Government allegedly confiscated many religious properties, including the great Mahdi mosque, which contains Mahdi's tomb and Ansar's seat, and also the main library and several mosques, particularly in the towns of Jahawra and Zagouna. The confiscated great mosque of the Ansar is said to have been desecrated by the security forces, which penetrated this sacred place with tanks and destroyed volumes of the Koran.

119. The Ansar Al Sunna community is also alleged to have been the target of an attack aimed at the religious leader Sheikh Abu Zeid which was perpetrated by three individuals in February 1994 in the main Al Thawra mosque during prayers. In 1993, as part of a campaign of intimidation with the objective of imposing official imams, the police forces are said to have placed their vehicles in front of the Al Thawra and Al Sahafa mosques in Khartoum during Friday prayers.

120. The arguments put forward by the authorities in the section concerned with religious activities and in the section devoted to non-Muslim places of worship are also relevant here.

2. Social and political matters

121. Many non-governmental representatives expressed their opposition to the political and forced imposition of Islam by the authorities. This policy is said to have affected all the sectors, both religious and civil, of society and to have infringed on the rights of not only non-Muslims but also a majority of the Muslims, to the detriment of Islam and the Sudan.

122. In order to illustrate their analysis of the perversion of Islam by the Government, these observers sent to the Special Rapporteur a fatwa of April 1992, emanating from men of religion and allegedly supported by the authorities, which defines the attitude to be adopted in relation to the apostates and unbelievers of Kordofan and southern Sudan:

> "The rebels of southern Kordofan and southern Sudan have risen against the State and have declared war on the Muslims. Their main objectives are to kill Muslims, desecrate mosques, burn and defile the Koran and rape Muslim women. They are encouraged in their actions by the enemies of Islam and of Muslims, namely the Zionists, the Christians and arrogant persons who provide them with supplies and weapons. Consequently an insurgent, even if he was previously a Muslim, is now an apostate; and a non-Muslim is an infidel who is obstructing the expansion of Islam, and Islam authorizes Muslims to kill him."

123. In reaction to this situation of indoctrination and denial of all rights and freedoms, non-governmental representatives referred to the Conference on the

National Democratic Alliance on Fundamental Issues, held in Asmara in June 1995, at which the Democratic Union Party, the Umma Party, the Sudan Communist Party, the Union of Sudan African Parties, the Sudan Peoples' Liberation Movement and the Sudan Peoples' Liberation Army, the legitimate command of the Sudanese Armef Forces, the Sudanese Alliance Forces, the Beja Congress, the Sudanese Trade Union and independent national personalities adopted the following principles on the relationship between religion and politics in the Sudan:

> "(a) All norms and principles of human rights enshrined in regional and international human rights instruments and covenants shall be an integral part of the constitution of the Sudan and any law, decree, executive order or policy measure contrary thereto shall be considered null and void and unconstitutional;
>
> "(b) All laws shall guarantee the full equality of citizens on the basis of citizenship, respect for religious beliefs and traditions and without discrimination on grounds of religion, race, gender or culture. Any law contrary to the foregoing stipulation shall be considered null and void and unconstitutional;
>
> "(c) No political party shall be established on a religious basis;
>
> "(d) The State shall acknowledge and respect religious pluralism in the Sudan and shall undertake to promote and bring about peaceful interaction and coexistence, equality and tolerance among religions and noble spiritual beliefs, and shall permit peaceful religious proselytization and prohibit coercion in religion, or the perpetration in any place, forum or location in the Sudan of any act or measure intended to arouse religious sedition or racial hatred".

124. The non-governmental representatives insist in particular on a return to the historical Sudanese Islam of tolerance and non-discrimination based in particular on respect for the rights of the various Muslim and non-Muslim communities.

125. The arguments put forward by the authorities in the preceding sections reflecting their concept of Islam, together with their analysis of the situation characterized by, inter alia, tolerance and coexistence, and the attempts of the opposition to make political use of religion for the purposes of power, may be considered here in response to the above-mentioned allegations deriving from non-governmental sources.

3. Protection of the individual

126. According to non-governmental sources, serious violations of human rights in the southern states, committed primarily by the Sudanese army but also by the conflicting parties other than the Government of the Sudan, against non-Muslims (see paras. 105-107), in no way spare the Muslims. Outside the southern states, it is alleged that religious leaders and the faithful of various Muslim brotherhoods, including the Ansar, Ansar Al Sunna, Khatmyya and Samaniya

brotherhoods, are subjected to restrictions on their freedom of movement and also campaigns of harassment and intimidation by the Government.

127. By way of example, concerning the Ansar, in addition to the arrests of the former Prime Minister Sadiq Al-Mahdi, an imam of the Ansar order and the leader of the Umma party, on charges of "involvement in subversive activities" and of more than 200 Ansar personalities, including religious officials who disputed this measure, followed later by their release, the Special Rapporteur was informed that on 6 September 1996 a group of armed individuals, following the instructions of the authorities, allegedly entered the Hija Boudnoubwa mosque with the intention of murdering Mr. Sadiq Al-Mahdi. After that attack failed because of the intervention of the faithful, the authorities are said to have ordered the arrest of members of the Directorate of Ansar Affairs, including Al-Fade Adam, Sidiq Mohamed Jom, Al-Hadi Abdel Aziz, Omer Abdel Rahman Omar, Isma'il Adam Ali, Abu Al-Abass Daw Al Na'im, Isma'il Balol, Taj Al Din Bashir and Abd Allah Bashir Abu Salif.

128. In addition, all the Ansar imams are said to be regularly subjected to police interrogations and various forms of provocation and to have been detained for periods of from one to three months without formal charges or sentencing because their Friday sermons did not conform with the directives of the authorities. For example, Imam Mohamed Mahdi Hassan of the Wad Nabawi mosque is said to have been arbitrarily detained more than five times and to have been subjected to mistreatment and torture.

129. Similarly, with regard to the Ansar Al Sunna brotherhood, in addition to the attempted assassination of the religious leader Sheikh Abu Zeid in February 1994 (see para. 119), the imam of the main Al Sunna, Shams El Din mosque is said to have been threatened with house arrest by the security forces, whose object is to force him to cede his position as preacher to an imam designated by the Government. During the same period, his muezzin is also alleged to have been kidnapped and beaten.

130. Lastly, the imams of the Muslim Brothers brotherhood, including Mr. Al Hibir Youssif Nour Al Dai'eim, are alleged to have been closely watched by the security agents, particularly during Friday prayers. In addition, they are said to have been regularly called in by the police forces and interrogated.

131. The various Muslim brotherhoods are said to be subjected to discriminatory attitudes and policies.

132. The authorities emphasized that nobody was in detention on grounds of religious belief or political conviction. People were detained for offences, such as conspiracies aimed at seizing power on the part of, among others, the Ansar. It was recalled, moreover, that the rules of law and justice were duly respected in the Sudan. Lastly, official spokesmen reiterated the arguments put forward in connection with the Sudanese Muslim opposition (see paras. 110-115).

IV. CONCLUSIONS AND RECOMMENDATIONS

133. The Special Rapporteur studied, on the one hand, the legislation in the field of tolerance and non-discrimination based on religion or belief and, on the other hand, the implementation of that legislation and of the policy in force. His analysis covered both the situation of non-Muslims - Christians and animists - and that of Muslims.

134. On the subject of legislation, the Special Rapporteur stressed that the State religion, or the religion of the State, is not inherently incompatible with human rights. However, that fact - which is confirmed by Constitutional Decree No. 7 - should not be exploited to the detriment of the rights of non-Muslims and the rights derived from citizenship, which imply that there should be no discrimination between citizens based, inter alia, on considerations of belief or conviction.

135. In that context, with reference to the constitutional provisions concerning the armed forces and the duty of jihad, because of the ambivalence of the concept of jihad, which has implications that are both offensive (holy war against infidels) and defensive (response to an attack), and because the authorities have stated that they have opted for the defensive meaning, the Special Rapporteur recommends that those authorities clarify, by means of an interpretive text, the defensive meaning of the term "jihad" in order to make sure that it is compatible with the international norms to which the Sudan has committed itself.

136. With respect to the application of the shariah, especially to non-Muslims, the Special Rapporteur recommends that the constitutional provisions on the judiciary should be supplemented by legislation ensuring that the courts take into account the customary law of non-Muslims as a guiding source of law, to the extent, naturally, that such law is compatible with international human rights provisions.

137. The Special Rapporteur also recommends to the authorities that they ensure the compatibility of legislation on hudud offences with human rights and urges that hudud penalties, because they are of exclusively Islamic origin, should not be applied to persons who are not Muslims.

138. On the subject of proselytism, conversion and apostasy, the Special Rapporteur wishes to emphasize the need to respect internationally established norms in the field of human rights, including the freedom to change one's religion and the freedom to manifest one's religion or belief either individually or in community with others and in public or private, subject to any necessary restrictions provided by law.

139. In this connection, specifically on the subject of conversion, the Special Rapporteur wishes to recall general comment No. 22 (48) adopted on 20 July 1993 by the Human Rights Committee:[3]

> "The Committee observes that the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief

with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 [of the International Covenant on Civil and Political Rights] bars coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert."

140. With regard to legislation on public order and the treatment of prisoners, the Special Rapporteur recommends that the authorities bear in mind the commitments they have entered into in the field of human rights, in particular those arising out of the ratification of the International Covenant on Civil and Political Rights, especially article 18. On the question of dress, the Special Rapporteur, while emphasizing that traditions and customs, irrespective of their origins, are equally worthy of respect, urges that dress should not be the subject of political regulation and calls for flexible and tolerant attitudes in this regard, so as to allow the variety and richness of Sudanese garments to manifest themselves without constraint. The Special Rapporteur recommends the revision of the Organization of Prisoners and Treatment of Inmates Act (1992), so that any early release is not applied in a discriminatory manner.

141. On the subject of legislation concerning education, the Special Rapporteur recommends that the State, through the school system, promote the development of a culture of tolerance and non-discrimination.

142. Lastly, the Special Rapporteur would be grateful if the Sudanese authorities would inform him of the current status of the Provisional Order and recommends more effective consultation with the churches in order to work out legislation that does not jeopardize the free exercise of religious activities, apart from restrictions legitimately provided for under international law.

143. On the subject of implementation of the legislation and policy in force, the Special Rapporteur focused his analysis, on the one hand, on non-Muslims and, on the other, on Muslims.

144. He wishes to emphasize once more that the religion of the State, or the State religion, is not inherently incompatible with human rights. However, in the application of its law and policy, the State should not take religion under its protection in order to define its content, concepts or limits, other than those that are strictly necessary and are provided for by article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, together with article 18 of the International Covenant on Civil and Political Rights. Such restrictions are only authorized if they are provided for by law, are necessary in order to ensure security, public order and public health and to protect morals or the fundamental freedoms and rights of others, and are applied in such a way as not to impair the right to freedom of thought, conscience and religion.

145. With respect to the situation of the non-Muslim communities, while noting the progress made in certain respects which deserves to be emphasized, the Special Rapporteur must nevertheless express his concern.

146. As regards freedom of religion and belief, the Special Rapporteur considers that there should not be any control that is likely, through limitations and constraints on officials of religion, believers and places of worship, to infringe the freedom of belief and the freedom to manifest one's belief.

147. In that connection, the Special Rapporteur considers it essential that any conversion should be the result of free choice and not of constraint. Similarly, the conversion of Muslims to another religion should not give rise to any kind of pressure, restriction or deprivation of freedom with respect to the converted believers and the religious officials of their community.

148. Concerning the implementation of the legislation on hudud offences, the Special Rapporteur reiterates the recommendations he made in the legislative part.

149. On the specific question of places of worship, the Special Rapporteur earnestly recommends that all the limitations on the construction of new places of worship be abolished. As regards the destruction of places of worship in the context of urban development plans, it is essential that provision should systematically be made for measures of compensation, in particular by providing sites for the construction of places of worship.

150. It is also necessary that the State should exercise its responsibility with respect to the protection of places of worship, to ensure that such places are shielded from religious extremism, obscurantism and the consequences of the conflict in the south of the Sudan.

151. With respect to education, the Special Rapporteur emphasizes the need to make allowances for the religious, ethnic and cultural diversity of the Sudanese population and to respect such diversity in the classroom by reflecting it in the curricula and the treatment accorded to the teachers and pupils of the non-Muslim communities.

152. It is also vital that schools should devise teaching methods that promote tolerance and freedom in order to make the unrestricted enjoyment of rights and freedoms available to all.

153. On the subject of protection of the individual, the Special Rapporteur wishes to recall that the physical and moral integrity of individuals must not be threatened, in particular on grounds of faith or belief.

154. Lastly, the Special Rapporteur notes the measures to ease restrictions on the travel of Sudanese and foreign religious officials and on the distribution of religious publications. The Special Rapporteur encourages the extension of these positive measures in order to enable non-Muslim Sudanese to avail themselves of all the rights and freedoms associated with citizenship.

155. Concerning the situation of Muslims, the Special Rapporteur appeals for the various Muslim brotherhoods to be respected. He wishes, however, to specify that religious freedom, in accordance with international law, should be a means of promoting tolerance and should not provide a basis for justifying obscurantism.

156. The Special Rapporteur recommends that the religious activities of the various Muslim brotherhoods should be conducted in full freedom, subject to restrictions provided for by internationally established standards and any restrictions to combat violence, extremism and obscurantism.

157. To that end, sermons should be the sole responsibility of the religious officials, who should be able to perform their religious activities and choose their own means of expression without any pressure, prohibition or interference with their freedom.

158. The Special Rapporteur also considers that special efforts should be made with respect to places of worship, which should be a forum for religious matters alone, not political ones, and, as places of meditation and prayer, should be protected from political tensions and controversy. The Special Rapporteur earnestly recommends that all the prohibitions and limitations imposed on the places of worship of the Muslim brotherhoods should be abolished. Similarly, all the community property confiscated, particularly from the Ansar Order, should be returned.

159. The State is also called on to exercise its full responsibility with respect to the protection of places of worship and to any criminal acts of destruction or desecration. All manifestations of hatred and intolerance and all acts of violence, intimidation or coercion motivated by religious extremism or intolerance of the religion or belief of others must be condemned and punished.

160. On the subject of protection of the individual, the Special Rapporteur earnestly hopes that restrictions on the freedom of movement of religious officials will be lifted and that the campaigns of harassment and intimidation directed against them, which are also prejudicial to their followers, will cease, thus enabling the Muslim brotherhoods to realize their full potential without fear, constraint or self-censorship, subject, of course, to respect for public order and the law and the avoidance of violence, extremism and obscurantism.

161. Finally, the Special Rapporteur considers that the overall policy emphasizing tolerance that has been publicly declared by the authorities should be unambiguously and unambivalently affirmed with greater determination and be followed by specific progress within Sudanese society towards religious, cultural and ethnic diversity.

Notes

[1] The waqf (pl. awqaf) is a gift or legacy of an asset or a piece of property in perpetuity to the State or other Islamic entity for holy works or for the public good.

[2] HRI/GEN/1/Rev.1, para. 5.

ANNEX

Christian activities in the Sudan (official information)

Forms	Social services centres	Missionary charitable societies	Medical centres/ clinics	Schools and institutions	Accommo-dation	Vehicles	Foreign missionaries	Improvised	Fixed	Church	State
2	4	9	15	40	27	201	200	25	25	a	Khartoum
-	1	2	2	7	14	7	15	15	4	b	
-	-	-	-	-	-	-	-	1	1	c	
-	-	-	-	-	-	-	12	12	3	d	
-	-	-	-	2	-	-	-	1	1	e	
-	-	-	-	2	-	-	-	1	-	f	
-	-	-	-	5	-	-	-	6	2	g	Bahr El Goza
-	-	-		-		-	-		1	g	
-	-	1	5	-	-	-	5	10	2	a	Upper Nile
-	-	-	-	-	-	-	-	3	1	c	
-	-	-	-	-	-	-	-	-	1	h	
-	-	-	-	-	-	-	-	1		i	
-	-	-	-	-	-	-	-		1	e	
2	5	12	22	56	41	208	75	42	-		
								6	6	a	Bahr El Gaza
								10	7	h	
								3		f	
								4		i	
								2		c	
								2		k	
								1		i	
								1		h	
								10	2		
	1	1			1			2	1	a	1

/...

Forms	Social services centres	Missionary charitable societies	Medical centres/ clinics	Schools and institutions	Accommo-dation	Vehicles	Foreign missionaries	Improvised	Fixed	Church	State
					1				1	[g]	
					1			1		[b]	
					1				1	[d]	
	1	1			4			42	18		

[a] Catholic.

[b] Episcopal.

[c] Presbyterian.

[d] Anglican.

[e] Sudanese interior.

[f] Pentecostal.

[g] Coptic.

[h] Jehovah's Witness.

[i] Adventist.

[j] African interior.

[k] New Apostolic.

[l] North Kordofan.